

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	15-CR-637(KAM)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	Friday, March 9, 2018
MARTIN SHKRELI,	:	11:00 a.m.
	:	
Defendant.	:	

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TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE KIYO A. MATSUMOTO
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

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1 Proceedings recorded by computerized stenography. Transcript
2 produced by Computer-aided Transcription.

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4 THE COURTROOM DEPUTY: This is a criminal cause for
5 sentencing. Docket No. 15-CR-637. USA versus Shkreli, as to
6 Martin Shkreli.

7 Counsel, please state your name for the record,
8 starting with the Government.

9 MS. KASULIS: Thank you.

10 Good morning, Your Honor. Jacquelyn Kasulis,
11 Alixandra Smith, Karthik Srinivasan, Laura Mantell, and Claire
12 Kedeshian from the US Attorney's Office. With the FBI, we
13 have Special Agents Mike Braconi, Sean Sweeney, and from
14 probation, we have Probation Officer Michelle Murphy.

15 THE COURT: Good morning.

16 MR. BRAFMAN: Good morning, Your Honor. Benjamin
17 Brafman, Marc Agnifilo, Andrea Zellman, Jacob Kaplan, and Teny
18 Geragos for Mr. Shkreli, who is present in the courtroom.

19 THE COURT: Good morning.

20 Let me just ask Mr. Shkreli to please raise his
21 right hand and take an oath to tell the truth.

22 Sir, do you swear or affirm that the statements you
23 are about to give this Court will be the truth, the whole
24 truth, and nothing but the truth.

25 THE DEFENDANT: I do.

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1 THE COURT: Please have a seat, sir.

2 MR. BRAFMAN: Your Honor --

3 THE COURT: Yes, sir.

4 MR. BRAFMAN: -- do you have any objection if I
5 address the Court from here?

6 THE COURT: Not at all, no. Wherever you are
7 comfortable.

8 MR. BRAFMAN: Thank you.

9 THE COURT: I did want to note that we received from
10 probation this morning a letter from an individual victim who
11 asks for restitution. We will provide copies of that request,
12 and if the parties would like, we can leave the judgment open
13 for a period of time so that Mr. Brafman can respond and the
14 Government as well to the request for restitution.

15 MR. BRAFMAN: Thank you, Your Honor.

16 We did receive a copy and we spoke briefly with the
17 probation officer who informed us of the letter and also
18 indicated that it is still probation's position that
19 restitution was not appropriate.

20 THE COURT: All right.

21 THE PROBATION OFFICER: We did not receive a copy.
22 We don't have a copy.

23 MR. BRAFMAN: I just got it from the clerk.

24 THE PROBATION OFFICER: Oh.

25 THE COURT: All right. Well, I think that pursuant

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1 to the usual procedures, letters were sent out to victims to
2 see if anyone wanted to put in a request for restitution, and
3 I do think it is a piece of this that we do have to address,
4 because restitution, as you know, is mandatory, and I do think
5 that the parties should have an opportunity to make
6 submissions if they chose to be heard.

7 MR. BRAFMAN: Thank you. We would be requesting
8 that the judgment of conviction be kept open for a couple of
9 days, in any event, regardless of the sentence so that we can
10 address the issue of designation once we know exactly what the
11 sentence is. So to the extent that we can have until Tuesday
12 to address restitution and the issue of a judicial
13 recommendation, that would be our request.

14 THE COURT: Does the Government object?

15 MS. KASULIS: No, Your Honor.

16 THE COURT: All right.

17 MR. BRAFMAN: Thank you, Judge.

18 THE COURT: Thank you.

19 Mr. Shkreli, as you can see, we have a court
20 reporter here who is making a record of today's proceeding,
21 and the transcript of this proceeding will be made part of the
22 official court record. I understand that you will be
23 appealing your sentence, and that is appropriate and that is
24 your right, and the transcript will be available to you for
25 that purpose.

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1 THE DEFENDANT: Thank you, Your Honor.

2 THE COURT: I would like to confirm that the
3 Government has provided notice to any victims who may be
4 entitled to notice of these proceedings and who may be subject
5 to a restitution order.

6 MS. KASULIS: Yes, Your Honor. We have provided
7 such notice.

8 THE COURT: All right. Thank you.

9 For the record, the one letter that we do have from
10 the victim is requesting restitution, order in the amount of
11 \$778,947.63, and I will be happy to receive further
12 submissions.

13 I have previously issued orders, as you know,
14 regarding the loss amount and forfeiture in this case and have
15 considered the material submitted in connection with those
16 submissions and motions in preparing for today's sentencing.

17 I've also reviewed the Probation Department's
18 presentence report dated December 12, 2017. Their sentencing
19 recommendation dated January 16th, 2018, and the presentence
20 report addenda dated February 21, 2018, March 9th, 2018, and
21 March 6th, 2018.

22 I've also reviewed Mr. Shkreli's objections to the
23 presentence report dated January 3rd, 2018, his sentencing
24 memorandum and attachments dated February 27th, 2018, and
25 letters dated March 7th and March 8th, 2018, from Mr. Brafman.

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1 I have also reviewed the 55 letters of support that
2 were submitted by defense counsel; and, in addition, I've
3 reviewed the Government's response to Mr. Shkreli's objections
4 to the PSR dated January 25th, 2018, the Government's
5 sentencing submissions dated March 6th, 2018, and the
6 Government's March 7th, 2018, letter.

7 In addition, I have reviewed approximately 15
8 sentencing letters that were submitted directly to the Court
9 by members of the public and representatives of various
10 organizations. All of those submissions have been shared with
11 both parties.

12 Have I overlooked any submissions.

13 MS. KASULIS: No, Your Honor.

14 MR. BRAFMAN: No, Your Honor.

15 THE COURT: I would like to confirm, Mr. Shkreli,
16 that you are a United States citizen so we need not address
17 probation consequences.

18 THE DEFENDANT: I am a citizen.

19 THE COURT: Thank you, sir.

20 Mr. Shkreli, are you satisfied with your attorney
21 and his team, Mr. Benjamin Brafman and the lawyers who are
22 representing you here today.

23 THE DEFENDANT: Yes.

24 THE COURT: Are there any unresolved conflicts,
25 contentions, motions or other issues that I must resolve?

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1 MR. BRAFMAN: No, Your Honor.

2 THE COURT: Mr. Shkreli does appear to be fully
3 alert and to be following these proceedings closely.

4 Would you agree with that observation, Mr. Brafman.

5 MR. BRAFMAN: Yes, Your Honor.

6 THE COURT: Do you know of any reason why we should
7 not proceed with Mr. Shkreli's sentencing today.

8 MR. BRAFMAN: No, Your Honor.

9 THE COURT: Mr. Shkreli, have you had the
10 opportunity to read the presentence report and other filings
11 made on your behalf by your attorney and by probation and the
12 Government?

13 THE DEFENDANT: Yes.

14 THE COURT: Did you have any difficulty
15 understanding those submissions?

16 THE DEFENDANT: No.

17 THE COURT: Have you discussed those submissions
18 with your attorney, sir?

19 THE DEFENDANT: Yes.

20 THE COURT: Are you now ready to be sentenced?

21 THE DEFENDANT: Yes.

22 THE COURT: Now, on February 23rd, 2018, I held an
23 oral argument regarding Mr. Shkreli's Rule 29 motion, the loss
24 amount, and forfeiture application in this case.

25 In addition, Mr. Shkreli, you do have the right to

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1 what's called a Fatico fact-finding hearing, which is a
2 hearing during which parties may present evidence relevant to
3 sentencing.

4 Do you wish to have a Fatico hearing, sir?

5 THE DEFENDANT: No.

6 THE COURT: You do have the right to make a
7 statement here in court, if you wish to be heard. I will
8 assure you that I have read your letter, but if you would like
9 to be heard further, I'm happy to hear from you.

10 MR. BRAFMAN: Your Honor, would the Court allow
11 Mr. Shkreli to address Your Honor personally after the parties
12 have completed their arguments and before you impose sentence?

13 THE COURT: Yes. I usually hear from the defendant
14 at this point, but does he want to wait?

15 MR. BRAFMAN: He would prefer and as would I.

16 THE COURT: All right. Well, I would just ask then
17 that you let me know when you want to be heard.

18 MR. BRAFMAN: I would ask that once the defendant
19 and the Government have completed their arguments and before
20 Your Honor is prepared to decide the sentence or issue your
21 ruling, that you ask Mr. Shkreli to address the Court, and we
22 will remind you if you have not.

23 THE COURT: All right. Because, as you know, there
24 are a number of matters that I must discuss: your objections
25 to the presentence report, the Government's responses, your

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1 sentencing requests, the Government's responses to that, and
2 other matters. So I'm just not sure where in this process you
3 would like to be heard.

4 I will also be discussing my own individual
5 calculation of the sentencing guidelines, as well as the
6 discretion of the 3553(a) factors under the criminal code.

7 MR. BRAFMAN: Well, it was my hope that, Your Honor,
8 as I briefly discussed with the Government, I think defendant
9 has adequately preserved its position with respect to our
10 objections to the PSR. I think we have adequately stated our
11 position with respect to loss and forfeiture. Your Honor has
12 ruled and we, for the purposes of proceeding, obviously accept
13 those rulings. I think at some point, after the parties have
14 addressed Your Honor on where the sentence should be in their
15 view and respectfully discuss the submissions in part and the
16 3553 factors, I'm assuming the Court will then read or speak
17 on where you see the guidelines and what you determine to be
18 issues that are appropriate for consideration, and then
19 ultimately pronounce sentence, and I would ask that
20 Mr. Shkreli be permitted to address the Court after the
21 parties have spoken and before Your Honor starts.

22 THE COURT: All right. Well, at this point, I
23 generally hear from the defendant, his lawyer, and the
24 Government, so if you would like to be heard, Mr. Brafman, I'm
25 happy to hear from you.

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1 MR. BRAFMAN: Thank you.

2 THE COURT: I appreciate your sentencing
3 submissions, I thought they were thorough and fully provided a
4 more fulsome picture of Mr. Shkreli, his background, and who
5 he is beyond the charges in this case.

6 MR. BRAFMAN: Thank you, Judge. We certainly tried.
7 Judge --

8 MS. KASULIS: Mr. Brafman, I'm sorry, before we
9 proceed, because of the extent of the redactions --

10 MR. BRAFMAN: Right, I was going to say that.

11 MS. KASULIS: Okay. I'm sorry.

12 MR. BRAFMAN: Your Honor, we briefly discussed among
13 each other, and I'm happy to just tell you our understanding,
14 obviously, subject to Your Honor's approval, it's almost
15 impossible, I think, for either side to speak knowingly and
16 fully on the issues before Your Honor and address them
17 publicly without touching on what we had filed at least
18 initially as redacted materials, and I think that we both
19 agree that in order to flesh these out, we may have to discuss
20 some of what we have initially asked to be redacted.

21 I think we both agree that after the argument and,
22 depending on Your Honor's view, should you feel that in the
23 interest of fairness, the public then needs to know what we're
24 talking about, we would remove our objections to the
25 redactions. I don't intend to mention names of people who

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1 would like to keep their names private. There are some people
2 who, I think, we can mention. But in terms of the evaluation
3 that we submitted and -- I understand that was our request to
4 keep it under seal, but both sides have spoken about it in
5 their sentencing submissions and it's almost impossible to
6 dance around what is redacted, what isn't redacted when having
7 an open discussion.

8 THE COURT: Well, I do think that the submissions by
9 the parties generally are subject to public view. The concern
10 I have is that to the extent those submissions discuss private
11 information or medical information about individuals who are
12 not before the Court, that the privacy rights of those
13 individuals should be protected.

14 I believe you may be referring to the psychological
15 report that was submitted by Dr. Salzman. To the extent you
16 wish the Court -- and I have reviewed it and it will factor
17 into my sentencing -- but to the extent you wish me to
18 consider it and to explain how that report is factored into my
19 sentencing consideration, I do believe that it should be
20 spoken about in open court. I am certainly not going to talk
21 about personal issues that may touch upon individuals who have
22 had a role in Mr. Shkreli's life, whose personal information
23 may be discussed in that report.

24 MR. BRAFMAN: Neither will I, Your Honor, and I
25 think we can redact -- still redact those issues, those

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1 matters very quickly without keeping the entire report under
2 seal. I think that's relatively easy, and we can do that
3 after the sentencing; and I don't intend, in open court, to
4 mention those issues or refer to them. I agree with you, Your
5 Honor.

6 THE COURT: Well, I do appreciate the fact that the
7 parties have worked well together in coming to an agreement as
8 to how best to deal with some of the sensitive information in
9 this case, and I will be happy to hear from the parties
10 regarding their proposed redactions on this report and any
11 other issues.

12 As you know, to the extent some of these unsolicited
13 letters from the public have come to my attention and to the
14 extent they may have discussed individuals' medical
15 conditions, I've tried to protect the privacy of those
16 individuals, unless they are talking about their own
17 conditions and wish them to be disclosed.

18 MR. BRAFMAN: I understand, Your Honor.

19 THE COURT: All right.

20 MR. BRAFMAN: Your Honor, thank you, and I'm --
21 I'm -- I'm going to try, obviously, not to repeat the large
22 volume of materials that we submitted. This is the first time
23 I have appeared before this particular court in connection
24 with a sentencing, and it's a privilege, as always, to appear
25 before Your Honor and before I begin, I just wanted to thank

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1 you for the courtesies that you extended to counsel in a
2 professional manner during a difficult trial and throughout
3 all of the proceedings that followed, and on a personal,
4 professional level, I think I speak for the whole team. It's
5 always easier when everyone keeps their discussions on a
6 professional level, so I appreciate that, Judge.

7 THE COURT: I appreciate counsels' efforts to
8 maintain appropriate courtroom demeanor and to make sure that
9 the trial progressed in an efficient way.

10 MR. BRAFMAN: And I also want to say at the outset
11 that although I intend in my discussion, as I have in our
12 written submission, I intend to challenge some of the
13 statements made by the Government in their sentencing memo.
14 It is not my intent to be personal and critical of any person
15 in the Government's camp. I have a great respect for the way
16 they have conducted themselves, and I think, on balance, we
17 have pretty much conversed, despite our adversarial nature, in
18 a professional manner.

19 I am, obviously, in disagreement with a number of
20 things that they said, but I want Your Honor to understand,
21 and they too, that my argument is with the Government's
22 position, it's not with any of the Government lawyers, nor do
23 I suggest that by disagreeing with their position it suggests
24 any level of incompetence or personal attack. It's obviously
25 difficult in an adversarial position to maintain that balance,

1 but I've really made an effort in this case to do that, and I
2 want to continue to do that today.

3 I also want to indicate to the Court that one of the
4 difficulties in appearing before a court, even a court where
5 you've spent a great deal of time now, but the first time in a
6 sentence, is what to expect. And I, like other good lawyers,
7 talk to other people who have had many sentences before Your
8 Honor; and, uniformly, they all tell me that you essentially
9 come out on the bench and you know the materials as well as
10 the parties and you have spent a great deal of time in
11 reviewing them, and I appreciate that, and as a result, I
12 don't intend to read the large volume of materials that we put
13 together.

14 I think I've also learned over the years that my
15 role as an advocate doesn't end with a verdict and that
16 sentencing advocacy is something I take very seriously and
17 it's something I have spoken on professionally because I'm not
18 certain all of the people in the criminal defense bar
19 understand how important the role of a defense lawyer is, even
20 if a bad verdict arises because there's a lot of things that
21 you can do professionally to hopefully inform the Court more
22 fully about some of the issues, so we've tried to do that.

23 And I also know from many of the colleagues, and
24 your colleagues in this building, who I have asked this direct
25 question, once on a panel and once privately, If I'm before a

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1 Court and I know that the judge has read everything, should I
2 bother to address these issues in an open court on my feet in
3 the presence of the defendant on the record and in the
4 presence here, obviously, of the whole world, and all of them
5 have said yes, that's your job, A; and B, you never know when
6 a Judge may, in fact, be moved one way or another by something
7 one of the advocates says and it's not your job to conclude
8 that a Judge has made up his or her mind before you speak, so
9 you do your job and then let the Court decide what to accept
10 or reject from your arguments.

11 And there's another issue, Judge. The issue in this
12 case is that I have the ability to impact on what the written
13 record here will have for the rest of eternity, and today,
14 with the press of a button, anyone who wants to see what's
15 said about Martin Shkreli can just look at it and find it and
16 either buy it or download it, and that as a result, I think I
17 owe it to him and to his family that the record not only
18 contain bad things, because we're obviously at a sentencing,
19 and in a sentencing, the Government usually stands up and says
20 the defendant did the following things and therefore he or she
21 should get the following punishment. And I think the record
22 should reflect, and I think Mr. Shkreli, quite frankly,
23 deserves that some of the quite extraordinary things people
24 have said about him be part of this record and that some of
25 the extraordinary things that he has done be part of this

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1 record as well. So I ask Your Honor to indulge me just a
2 little bit more. I know you have been quite patient
3 throughout the trial that I'm not speaking just for the sake
4 of speaking. I am -- I'm trying very, very hard not to fight
5 with you today. Quite frankly, I'm -- I've got my begging
6 voice on because I'm trying very hard to suggest with great
7 respect for everyone in the well of the courtroom that the
8 Government's recommendation is too severe, that to suggest
9 that someone like Mr. Shkreli, for the crime he stands
10 convicted of, should face 15 years in prison is just not
11 appropriate. I don't think it's illegal, and I'm not
12 suggesting they do anything wrong by suggesting it, I just
13 think it's just not appropriate, that it's not warranted and
14 that he should not be sentenced solely for being Martin
15 Shkreli. I understand how frustrating that may be to you,
16 Your Honor, quite frankly, to me too. There are times -- I
17 have been with him now for two years and I've gotten to know
18 him quite well and, quite frankly, he's -- I'm old enough to
19 be his father, I'm not, but I do have the benefit of a lot of
20 years on him, and there are times when I want to hug him and
21 hold him and comfort him, there are times when I want to punch
22 him in the face because he's made my job, to some extent, more
23 difficult by some of the things he has said, and I think when
24 you read the evaluation and you understand, you know, who
25 Martin Shkreli is and how he is wired and what makes Martin

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1 Shkreli be Martin Shkreli, I think it suggests that sometimes
2 what he says that appears to be inappropriate is not something
3 he is saying because he's a bad person. It's something he is
4 saying because at times he doesn't fully appreciate how other
5 people will react to it. That's something Dr. Salsberg has
6 stressed, that someone like Martin Shkreli, who is made like
7 Martin Shkreli, who may be brilliant in certain matters may
8 nevertheless lack certain people skills, may have some degree
9 of social awkwardness; and sometimes when you are as smart as
10 I think everyone now, I would hope, agrees he is sometimes
11 what comes out of your mouth before you have a chance to
12 really think it through is sort of like the kids today who hit
13 send before they really understand what they've texted, and
14 sometimes what they send really hurts them for years to come
15 and yet, you know, sometimes you are dealing with a
16 fundamentally good kid who has done something, you know,
17 stupid or aggravating. And some of the letters discuss that
18 quite candidly and quite fully, and I want to discuss it as
19 well, because I think what the Government has done in its
20 submission is painted a dark picture of Martin Shkreli in an
21 attempt to suggest to the Court that he is an evil man who
22 deserves to be punished with a draconian sentence, which is
23 what I think 15 years is, and although they have, to their
24 credit -- even the Government concluded that a guideline
25 sentence is not appropriate, and in this case the guidelines

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1 would be just out of sight, it would end his life, they have
2 come to you with a number that I say, and I say this doesn't
3 sound respectful, I think it's a made-up number. Why
4 15 years? They don't give you any basis for suggesting that
5 the 180 months is the appropriate sentence. Why not six
6 years? Why not 36 months? Why not 120 months? It's a
7 made-up number. It's a number that they feel is adequate and
8 punitive and is very, very full of punishment and very, very
9 devoid of compassion or rehabilitation.

10 So I think we start with the premise that you have
11 wide discretion, and I think you have extraordinary discretion
12 and that's what is both comforting and difficult in this role
13 today, because I don't know where Your Honor is in between
14 time served and 15 years or a guideline sentence. So my hope
15 is that you are somewhere below the Government's application
16 and somewhere close to our application, and I understand that
17 walking out of here with our request, it be, you know, a
18 miracle under the circumstances, but I'm hoping that Your
19 Honor recognizes from the materials that we have submitted
20 that this is an interesting man with, I think, great
21 potential, and that, in many ways, in my own view, and I say
22 this despite the fact that I understand the technical
23 decisions that the law requires.

24 I understand that Your Honor's ruling's on the issue
25 of loss, I understand how the guidelines are calculated, and

1 I'm not discussing them or arguing them or asking you to
2 change your mind, but I am saying, and I try and say this with
3 some degree of modesty, I've never seen a securities fraud
4 case like this, and I don't think the Government has, and
5 that's why when they submitted their letter to Your Honor or
6 their memo to Your Honor in which they cite cases that they
7 believe suggest sentencing parity, it's a throwaway at the end
8 of a good sentencing memo where they're just saying, By the
9 way, we know the defendant has given you a list of cases where
10 modest sentences have been imposed in many districts in
11 securities fraud cases, but here's five cases where the courts
12 have imposed very, very high sentences in securities fraud
13 cases; and when I looked at it initially, I was sort of
14 stunned, because when you drill down into the facts of those
15 cases and you look at the decision in Lang, for example, there
16 were more than 300 victims, they were all vulnerable victims,
17 they were Hurricane Katrina victims who lost their homes and
18 the opportunity to rebuild and there was a substantial fraud
19 and the defendant was found to have bought the -- with the use
20 of the funds to buy expensive motorcycles, expensive homes,
21 and use those funds to live a lavish lifestyle. That's not a
22 parity case for the Court to consider, Your Honor.

23 In the case of Aaronson, it's a case where the
24 defendant was already serving 40 months for a previous
25 securities fraud case, and it was a category three defendant.

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1 This defendant, as we all agree, is a first-time offender,
2 he's in Criminal History Category I and he had no prior
3 conviction, and the fact that he is remanded is not as a
4 result of a crime. He's remanded because Your Honor had the
5 ability to do it because he was on bail in this case, but the
6 facts that caused him to be remanded would not, by themselves,
7 in my opinion, give rise to a separate criminal case because
8 of, I think, the First Amendment cases that suggest, however
9 offensive it might be what you said, so I'm not quarreling
10 with Your Honor's decision to remand Mr. Shkreli, but it's not
11 a prior conviction. He comes before you as a first-time
12 offender, despite the fact that he was on bail and lost his
13 right to continue on bail.

14 And I also suggest that the Galanis case is a
15 defendant who is a Criminal History Category III, and the
16 Jaramillo case was a person who targeted -- specifically
17 targeted retirees, widows, and off -- and -- and individuals
18 who had retired where English was a second language and took
19 more than half of the investors' money for a lavish lifestyle.

20 The point I am making, Judge, is that when you are,
21 in effect, dealing with the facts in this case, and I say this
22 mindful of the decisions Your Honor made with loss, but I
23 think all of us would agree that there's something unique
24 about this case because he was acquitted of five counts, and I
25 think that's not a flippant matter for the Government to, sort

1 of, ignore and then suggest, Well, you know, those crimes were
2 proved by preponderance of the evidence, for example, so Your
3 Honor can consider them.

4 The fact is that when you look and you drill down at
5 the verdict in this case, the crimes that he was acquitted of
6 would have required the jury to find beyond a reasonable doubt
7 that Mr. Shkreli intended to deprive these people of their
8 money and the jury said, No, we don't see that beyond a
9 reasonable doubt.

10 And with respect to the Retrophin count, they would
11 have been required to find beyond a reasonable doubt that he
12 intended to defraud his company, his baby, a baby that's now
13 worth a billion dollars.

14 So at the end of the day, I understand where you
15 come out on the loss, and I understand the technical
16 definitions and I also understand the Government's, sort of,
17 Hail Mary by saying, Well, look, Judge, he did benefit because
18 he helped -- he was able to build Retrophin, he was able to
19 pay back Merrill Lynch. But at the end of the day, even if
20 that's true, we don't see the defendant taking money and
21 traveling lavishly; we don't see the defendant taking money
22 and buying exotic materials. When Retrophin becomes public,
23 yes, he does make some stupid purchases, but it's not during
24 the MSMB, MSMB Healthcare period when he's taking investors'
25 money and just sticking it into his own pocket. And at the

1 end of the day, to the extent that he is -- he has believed to
2 have to built Retrophin, and I'm not going to argue the facts
3 in this case, but the Government can't just take the entire
4 billion-dollar company and say because some of that was
5 essentially the result of being able to use MSMB investor
6 money, you should discount the entire success that was built,
7 you can't -- you really can't do that, Your Honor.

8 And the interesting part about this case as well is
9 I've never been in a case, and I don't know of any other
10 securities fraud case where each of the people who came in to
11 testify as victims, who the Government has a right under the
12 law to characterize as victims for the purposes of the victim
13 enhancement, each of them nevertheless made two, three, four,
14 five, some of them ten times their money. I've never seen
15 that in a securities fraud case. In a Ponzi scheme, which the
16 Government suggests there is, there is no happy ending. At
17 the end of a Ponzi scheme, there's zero money, everybody loses
18 except the people who are paid back as a result of other
19 people's investments.

20 So at the end of the day, Judge, there is something
21 unique about this case. And I also think, Your Honor, that
22 the jurors' verdict in this matter has to matter, and I think,
23 Your Honor, having sat now through two trials -- and I don't
24 want to say anything that will in any way impact on
25 Mr. Greebel's sentence at a later time before Your Honor,

1 that's not my purpose, but when you look at the verdict in
2 which he was convicted on Count Seven of the Retrophin fraud
3 and you look at the verdict in Mr. Shkreli's case where he was
4 found not guilty of that fraud, there is a method to the
5 madness with respect to what the jurors did, and the method to
6 the madness was, I believe Your Honor charged, in our case,
7 that Mr. Shkreli had a reliance on counsel defense, and that
8 if the jury found that he had a reasonable basis to rely on
9 Mr. Greebel's advice, that that would be a complete defense.

10 So the rationale for the verdict in our trial --
11 Your Honor helped us pick a remarkable jury. I don't think
12 anybody in this room, certainly not me, has ever gone through
13 a voir dire where the basic, inherent, volatile prejudice of
14 some of the jurors was spoken openly and candidly to the
15 Court, and I think Your Honor did a very good job of passing
16 on those people, and, ultimately, with your help, I think we
17 found a reasonable group of people who were determined not to
18 sentence Martin -- not to convict Martin Shkreli because he's
19 Martin Shkreli but to determine whether the Government had met
20 its burden with respect to each and every count and to get
21 beyond the drama of the trial wherein media gauntlets were
22 faced every day, and get beyond the Daraprim issue, which had
23 nothing to do with the crimes, and they were able to do that.

24 And I'm asking you, and I say this with great
25 respect, that Your Honor do that as well when you determine a

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1 sentence; that you not sentence Martin Shkreli because he's
2 Martin Shkreli with all the baggage that he brings to the
3 table that really has nothing to do with the crime of
4 conviction. I know it's hard to do that and I --

5 THE COURT: Well, I will assure you that his online
6 media presence, of which I have been unaware, unless and until
7 someone brings it to my attention, and the comments that he's
8 made outside the courtroom were not evident when he was in
9 this courtroom throughout the whole trial. He behaved
10 appropriately, respectfully, and presented as the intelligent
11 young man that he is.

12 So I understand very well that the Daraprim pricing
13 is not an issue before me --

14 MR. BRAFMAN: Then I'm going to move on.

15 THE COURT: -- and also that whatever adverse media
16 attention he's brought upon himself through his online
17 presence or comments is also not before me, except to the
18 extent that we had to deal with a bail revocation.

19 MR. BRAFMAN: I understand you and I'm happy to hear
20 that and I won't belabor those issues, so thank you, Judge.
21 Forgive me for having -- obviously reading the Government's
22 memo, I have no idea what Your Honor --

23 THE COURT: Well --

24 MR. BRAFMAN: -- will or will not address.

25 THE COURT: -- certainly, if you feel that I am, in

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1 my comments, I am indicating that I am considering them in a
2 way that you think is inappropriate, certainly let me know. I
3 understand why he is here and what the counts of conviction
4 are.

5 MR. BRAFMAN: Thank you very much, Judge.

6 So let me move on.

7 Judge, you know, one of the things that I see in the
8 Government's memo, and, quite frankly, that I didn't see in
9 the Government's memo is they have, in large measure, ignored
10 what I think are a large amount of very powerful, and in many
11 ways, eloquent letters from people who have impacted on
12 Mr. Shkreli in their personal lives and who Mr. Shkreli has
13 impacted on, and they pick one or two facts in the sentencing
14 memo that they don't like and then they deal with it in the
15 way that I don't think does justice to what we've presented
16 for the Court, and I fully expect that Your Honor will treat
17 those letters and give them the merit that they deserve.

18 And let me also reference very, very briefly a
19 report by Dr. Salsberg, which I think Your Honor has obviously
20 reviewed and in your comments today, you've already indicated
21 that it is one of the matters that you will consider and have
22 considered in determining, A, what the appropriate sentence
23 is, and also who Martin Shkreli is and what makes him tick or
24 not tick, on occasion, so let me not spend a great deal of
25 time on that.

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1 I just want to address something that the Government
2 did raise.

3 He wasn't picked out of the Yellow Pages, he wasn't
4 picked by Mr. Shkreli, and the Government indicates that they
5 don't challenge his credentials or his background or his
6 talent or his ability -- they say that -- and yet on a
7 footnote, which I consider to be a little bit snarky, they
8 say, We don't know why he was picked, so I will tell you so
9 there's no secret and had they asked, I would have told them.
10 So far today, he was paying about \$6,000 for the actual time
11 that he spent, and there is another between 3- and \$5,000 that
12 he is owed because he was late in billing, so it's a total of
13 10- or \$11,000. For someone who is considered by virtually
14 all of the people who specialize in this, in this -- in these
15 issues, as one of the best, if not the best, and, you know,
16 how we found him, he was someone very close to the defense
17 team, has a child who is autistic, and he's been the treating
18 physician and analyst for the last ten years and was so
19 impressed with his diligence and his conscientious manner in
20 which he addresses these issues that we thought that is the
21 person who we trust, and the fact that he deals with children
22 primarily is also important because the issues involving what
23 used to be called Asperger's, what is now still called autism,
24 as the doctor writes, is manifested at times in very young
25 children who manifest with learning disabilities and

1 indications that they are, in fact, autistic but you can
2 outgrow a lot of that. So he's not prepared, to his credit,
3 even though he's being paid, he's not prepared to say that
4 Martin is, in fact, like Rain Man. And, you know, that was
5 the reference by one of the witnesses, and despite my probing,
6 I wasn't able to get him to ever say, Yes, Rain Man was an
7 autistic young man in that movie and that's what Martin
8 reminded me of. Instead he said over and over again that
9 Martin reminded him of Rain Man because of his persistence and
10 because of his fixation on details as the character in the
11 movie. That's just not true. I'm not suggesting he came here
12 to lie, but at the end of the day, Judge, whoever ever saw
13 that movie understands what Rain Man was in that picture, and
14 if you watch Martin Shkreli, and if you listen to Martin
15 Shkreli, and if you live with Martin Shkreli, you see awkward,
16 inappropriate social behavior at times that I submit that I
17 don't think he can completely control. And when Dr. Salsberg
18 tells you what his diagnosis is, Yes, he's depressed; Yes, he
19 has anxiety disorder, they are not legal defenses the crime of
20 securities fraud, and I'm not suggesting that they are.

21 And he also indicates something which is really
22 interesting, and, you know, the Government can't have it both
23 ways. There is a statement in their memo that struck me as,
24 Wow, this is -- this is who I have to deal with. They
25 suggested that, look, Dr. Salsberg didn't read the trial

1 record, so how can he analyze Martin Shkreli's behavior that
2 got him to be convicted because he didn't read the trial and
3 he wasn't at the trial. And what's powerful about that is,
4 first of all, you can't win with that argument, because if it
5 had been at the trial and suddenly his report is right on the
6 money with respect to Aselage's testimony and Richardson's
7 testimony about Martin, what they saw, and what they heard,
8 they will say he has contoured his report to fit the trial
9 evidence, so I think the fact that he didn't see the trial
10 evidence and comes to the same conclusion as Steven Aselage,
11 and I quote you from the record -- I don't have the page, but
12 we all remember it -- Martin believes what he is saying to be
13 true; Martin sees the world through rose-colored glasses;
14 Martin believes at the time he is saying something that that,
15 in fact, is true. And that's Steven Aselage, who is not a
16 defense witness; he wasn't sympathetic to Martin Shkreli.

17 You also have Richardson and Aselage who tell you
18 that Martin was depressed, that sometimes he slept for days.
19 Richardson talks about his hygiene issues where he had to tell
20 him, Take a shower, had to buy him clothing and Aselage tells
21 us that when Martin came to California for the purpose of
22 engaging in business discussions, he stayed in his hotel for
23 days on end, and when confronted by Aselage, the testimony
24 reveals that Martin indicated that they're trying to adjust
25 his medication, that he has depression. That's exactly what

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1 Dr. Salsberg says. It's exactly how he characterizes Martin
2 Shkreli.

3 And all I am saying, Judge, is at the end of the
4 day, the Government is suggesting that you take this man who
5 is flawed and somewhat broken and you toss him away, because
6 15 years is a life sentence when you realize that's 39 --
7 let's assume -- he's 34. Let's assume that he lives and he
8 remains healthy and, as vulnerable as he is, nothing happens
9 to him in the prison. And among the prayers I say every
10 morning is that nothing happen -- should happen to Martin
11 Shkreli, because in the MDC, he is in a violent place. He is
12 in a place that several of your colleagues have indicated that
13 reminds them of a prison in a third-world country. And to his
14 credit, how does he spend his time based on the letters you
15 received? Nowhere in the Government's memo do they even touch
16 the fact that he treats and helps inmates; that he buys books;
17 that he gets them reading materials; that he has classes in
18 basic math. He's a good person, Judge; he's not a perfect
19 person; and he has violated the law, but there are so many
20 redeeming qualities in many of these letters that it implies
21 and it powerfully suggests that you find a sentence that
22 allows him, at some point, hopefully relatively soon, to
23 continue to be productive and to continue in the treatment or
24 get the treatment that Dr. Salsberg believes that he needs.

25 And what Dr. Salsberg is suggesting is what I would

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1 hope we do in an enlightened country with somebody like
2 Mr. Shkreli and that you find a way to hopefully fix him at
3 some point or get him the help that he needs. He needs
4 treatment; he needs pharmacological treatment, according to
5 Dr. Salsberg and he's not going to get that in a prison
6 facility if you put him there for a long time.

7 And I just want to read something to you, Judge,
8 that -- it's obviously completely ignored in the Government's
9 memo because I don't know how they deal with it. If they want
10 to say that Martin is a bad guy with the letter you get from
11 Lamark Mulligan, and Lamark Mulligan's letter is at Index 47,
12 and I'm not going to read the whole letter, I know Your Honor
13 has, it's handwritten. He says, I am currently one of Martin
14 Shkreli's students at the MDC Brooklyn. And I read further,
15 Martin has been the most positive and influential part of my
16 experience here thus far.

17 I mean, Judge, let me just say that one time:
18 Martin has been the most positive and influential part of this
19 inmate's experience who is at the MDC, and maximum security
20 prison. He always is excited to teach the glasses. The
21 impression that he realizes he was wrong and wished that he
22 had never made these mistakes at all and instead wish,
23 obviously -- he talks about his remorse, and at the end he
24 says he has made something as horrific as being incarcerated a
25 positive and impactful learning experience for me and I

1 believe that says so much about Martin Shkreli.

2 Judge, it does. It does. There are a lot of bad
3 people when they get locked up, they ignore the people around
4 them. Especially if you are not a street person with a
5 criminal record used to being in that facility.

6 And I just want to read one other quote from
7 Exhibit 48, which is the letter that is from Patrick Sickler,
8 also an inmate. This is the person who Martin teaches chess
9 and always finds a good book for him to read and helpful to
10 the people around him. But let me read how the letter ends,
11 because he indicates to the Court that his girlfriend had the
12 twins, and they're in the NICU unit, which is a premature unit
13 for treating premature people.

14 Look how sad but eloquent the last sentence is as
15 Martin arranges for his girlfriend to get diapers and wipes.
16 He says, that was the most caring gesture anyone has ever done
17 for my family in these stressful times and shows the character
18 of Martin Shkreli.

19 This is the most caring gesture that this person has
20 ever had, and it's coming from Martin Shkreli who doesn't know
21 him and arranges for them to get help.

22 (Continued on following page.)

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1 MR. BRAFMAN: (Continuing) You know what, Judge,
2 the fact is that as I was preparing last night I read these
3 letters again. Because I've read them when I got them, and I
4 read them when I submitted them to the Court, but I read them
5 again. When we read things again you see things that
6 sometimes you haven't seen. Sometimes like when you read a
7 good book, when you a reread it you say, I didn't remember
8 that from the first reading.

9 The letter from Mr. McCarthy, Ken McCarthy, Exhibit
10 42. Ken McCarthy has been involved in education for a long
11 time. He starts by saying something really cool, but
12 negative, like many people. My first introduction to Martin
13 Shkreli was through the news media. He appeared to be a most
14 unsympathetic if not contemptible person. Now he meets Martin
15 Shkreli, and Martin Shkreli is someone starts watching his
16 videos, education videos. This is a man who has lectured at
17 MIT, lectured at Columbia, and talks about Martin's videos as
18 the best educational materials he has read. So he starts
19 writing to Martin at the MDC. What he does tell you Martin
20 asks him for not, for drugs, not for contraband, not for food,
21 or commissary. I've been corresponding with Mr. Shkreli since
22 he was incarcerated and his sole interest, besides personal
23 preservation, was to acquire materials to assist him in
24 teaching fellow inmates. He requested dictionaries, math
25 books, self-help books, which I sent him. Mr. Shkreli is a

1 highly unusual, and I imagine aggravating man -- how
2 appropriate -- highly unusual and aggravating man, but I
3 rarely in my 35 years as an educator encountered an individual
4 with the depth of sincerity towards uplifting others through
5 education. He has potential to do good.

6 What I'm asking at the end of the day when I finish,
7 and I'm getting there, Judge, is that you will allow his
8 potential to be put to good use. In the end of the day isn't
9 that what we are supposed to do under 3553, punish someone but
10 also see if there is a way to use their potential for the
11 benefit of society.

12 Your Honor, I have to refer respectfully to just a
13 couple of other issues, which I think are very important for
14 you and for the record but also quite frankly for Martin.

15 First, Judge, is a statement by the defendant's
16 brother, it's Exhibit 3. The defendant's brother is 30 years
17 old. He lives at home with his parents. And he writes at the
18 end of his letter a line that I think is just wonderful. As
19 good and bad as it is, it's just perfect. At the end of the
20 sentence, Exhibit 3, page two, he says, "I think Martin may be
21 difficult to understand simply because there really is no one
22 else like him."

23 Judge, doesn't that ring true in many ways? I don't
24 know that I've ever met anyone exactly like him who is as
25 driven as he is, who is as smart as he is. Yet I'm standing

1 in the well of sentencing court trying to save his life,
2 that's a dichotomy which is almost inexplicable. And I think
3 when you look at the beginning of our sentencing memorandum
4 when we refer to the observations of Dr. Salsberg. I think
5 you see some of the comments by Dr. Salsberg where he tries to
6 unravel this mystery.

7 You know what is unfortunate, the Government in
8 their sentencing memo has cherry-picked from among thousands
9 and thousands of e-mails by the defendant. They have
10 essentially taken a couple of statements that he has made, and
11 the person he's speaking to, that he's writing to, is a woman,
12 that the person he's speaking to is writing a book about him.
13 He's lonely. He's at the MDC. He says a couple of things
14 that they seize on. At the end of the day I don't know
15 anybody, including all the people in the well of this
16 courtroom, who would be able to survive that test. You take
17 all the e-mails I've written in the last two years, and you
18 take one snippet here and one snippet there, I think you'll
19 find a couple of things that don't reflect well on me.
20 Because maybe it's an offhand remark, maybe it's something
21 that I'm not proud of having said, maybe it's something that
22 is just embarrassing that happens.

23 Especially when you are incarcerated and you are
24 alone and you are trying your best to maintain your sanity and
25 someone starts to write to you, and visit you, and starts to

1 try and develop a relationship with you, at the end of the day
2 you don't use that to suddenly decide that that demonstrates
3 that they are not remorseful.

4 You don't have references to the powerful letters
5 from other -- the Government doesn't references the powerful
6 letters from others that indicate that he is remorseful.

7 I also think part of the problem with Martin Shkreli
8 is the persona that he tried to develop in the media, in the
9 YouTube world, in the Facebook world, cuts against him, hurts
10 him dramatically. I hear what your Honor is saying that
11 you're not going to seize on them to impact on the sentence
12 that you are going to impose, but in some respect the
13 Government has. In some respect the Government has urged you
14 to use things that are not necessarily reflective of who he
15 really is and actually use that to punish him.

16 You know Dr. Trachtman wrote a letter. The letter
17 arrived only last night and we provided it to the Court and
18 the Government immediately. He's a brilliant man. He's a man
19 who is involved in medical research. He knows Martin. He
20 sees his potential. He suggests if there is a combination of
21 punishment and community service where it's regulated and
22 monitored, he's closely supervised, he can do wonderful things
23 because that's the way his mind works. He's able to find
24 economical solutions to rare diseases that most people ignore
25 and that Martin is fixated on.

1 I want to read something from one last letter,
2 because it's important for two reasons. If your Honor will
3 recall, obviously we didn't have this letter at the time, we
4 made a conscious decision to try and not confront some of the
5 people who we didn't know prior to trial, whether they were
6 adversarial witnesses or Government witnesses, we didn't want
7 there to be any suggestion that we're getting in the way of
8 witnesses. But there was a man who was referenced, I think in
9 the testimony of Aselage. It's a statement by Mr. Aselage I
10 think used to suggest that Martin is mean, that Martin is
11 inappropriate, that Martin goes out of his way to try and hurt
12 people who don't need hurting. And Dr. Aselage referenced a
13 meeting in which Dr. Horacio Plotkin was criticized by Martin
14 and yelled at by Martin and cursed by Martin and made to feel
15 like he had no self-worth. That was in the trial record. It
16 had no relevance, in my opinion, other than to suggest that
17 Martin is a bad guy.

18 Now we have a letter to address to your Honor, as I
19 think you know, from Dr. Plotkin. It's important for two
20 reasons. First of all, Dr. Plotkin discusses how he was in
21 fact yelled at. And he indicates that he knows that
22 Mr. Aselage mentioned it during the trial. And he says that I
23 was that person. For the record, Martin didn't shout at me,
24 he blamed me for missing some deadlines.

25 When you are in business and you have these meetings

1 and you have people who are supposed to comply with certain
2 deadlines and they commit those deadlines, I think it's okay
3 for voices to be raised on occasion. But this wasn't an
4 effort by Martin to belittle a scientist. The important part,
5 the second part, of Dr. Plotkin's letter is even more
6 important, because he talks about the acts of extraordinary
7 generosity that Martin performed that Dr. Plotkin is aware of.
8 He talks about a baby in Venezuela who needed a medication
9 that wasn't available. Martin arranged for it to be purchased
10 for a year for this baby. A little girl in Boston who is
11 blind and autistic, Martin agreed to pay for her treatment but
12 the family turned it down. They thought it was too much
13 money. Martin bought a wheelchair for a little girl who
14 suffered from PKAN disease. At the end of the day he knows a
15 lot about Martin.

16 I need to mention something because the Government
17 is wrong as a matter of law. Five or six times in their memo
18 they suggest that these acts of civic kindness or charity or
19 acts of kindness don't rise to the level of being so
20 extraordinary that they qualify as I downward departure under
21 5H1.1. We don't need them to qualify as a downward departure.
22 One of the things about the guidelines, in my personal opinion
23 with all do with respect to the Commission, in order to meet
24 that threshold you had to be Mother Theresa, who had to have
25 lived your whole life just doing good to meet the standard of

1 extraordinary circumstances if you wanted to the Court to
2 consider it.

3 We're asking for a variance. We don't need to meet
4 the legal threshold of downward departure. They say it over
5 and over again, that will act of charity doesn't rise to the
6 level of extraordinary circumstances. That act of kindness
7 doesn't amount to -- but it tells you something. It tells you
8 something.

9 When Martin talks for hours and hours and hours to a
10 rape victim, who he doesn't know, and who I won't identify,
11 and helps her through the most difficult time of her life to
12 the point where she feels it necessary to tell you about it.
13 He's comforting a stranger who's gone through trauma. It's
14 not just I'll help you or I'll write you a check. It's day,
15 after day, after day. She stays on the phone. He counseled
16 her and comforts her. Most people don't do that.

17 It's something worth repeating, Judge, most people
18 don't give of themselves that way. In the case that we cite,
19 I remember, which is the Third Circuit, I thought that was a
20 pretty good circuit and close to this district. But when we
21 cite Zafiro as a case where the Court specifically pointed out
22 that helping someone with your time and effort is more
23 significant than a rich person writing a check to a charity,
24 the Government's response is that's not a case in this
25 Circuit, that's the Third Circuit. Yes, it's the Third

1 Circuit, but it's a case where District Court instructs all of
2 us that when someone does what Martin Shkreli appears to have
3 done over and over and over again, that at the time of
4 sentencing, as Judge Raykoff said, if ever there is a moment
5 when a judge is supposed to give a person credit for the good
6 things that they have done in their life, it's on the moment
7 of judgment day, where that stuff should count.

8 I submit that Martin Shkreli over and over again has
9 demonstrated to this Court and through these letters that
10 despite all of the nonsense and the stupid stuff that he does.
11 And the stuff that gets him, you know, not in necessarily
12 legal trouble, but gets people to write about him and talk
13 about him, that is not the whole picture. That the whole
14 picture, as I think you know, your Honor, from these letters,
15 is a very, very, very different picture. It's a picture that
16 is extraordinary in many ways, even if you don't need the
17 downward departure level of extraordinary circumstances.

18 I'm almost done, your Honor, thank you for your
19 patience. I'm trying not to belabor the issue. But after I'm
20 done, pretty much the Government speaks, then Martin of speaks
21 and your Honor will decide the fate. I don't want to leave
22 stuff on the table that I think is just too important not to
23 stress.

24 So I respectfully refer the Court to Exhibit 28,
25 which is a letter from Petro Machado. I don't know him; I

1 never met him. He wrote a letter to the Court. He is
2 somebody who is an investor, who invested, who made a lot of
3 money, but that's not the import of his letter.

4 The last paragraph is talking about him having a
5 very serious, incurable disease, Multiple Sclerosis. The
6 last paragraph he says -- I'm sorry, the second paragraph, he
7 says, during these past few years until Martin's latest
8 arrest, I've come to know him relatively well. I feel I have
9 a valid opinion to share with, your Honor. My definition of
10 Martin would be he's a genius but extremely misunderstood.
11 Unfortunately for him, I believe he is to blame for that
12 misunderstanding. Again, a cogent observation.

13 But look at the last paragraph, respectfully. What
14 I as a patient with an incurable, devastating disease like
15 hundreds of millions of others around the world ask, is that
16 Martin be punished in a way that makes society benefit from
17 his mental capacity.

18 That's what I'm asking you to do. Sentence Martin
19 in a way where he's not warehoused, where he has no treatment
20 and no access to being able to use his real talent to help the
21 people who need him most. But use the sentencing discretion
22 that you have to fashion a sentence that is consistent with
23 the mandate, sufficient but not greater than necessary.

24 Whether that's the 18 months we ask for, or 24
25 months or 36 months; it can't be it, just can't be the 15

1 years that the Government is requesting for. That is a
2 horrific draconian sentence. That in this day is really used
3 for recidivists or people who have essentially created a
4 career of criminal conduct that ends with a draconian
5 sentence. Where a judge like you, says, it's enough, we're
6 going to put you away forever and that's what 15 years
7 suggests.

8 Judge, you know at the end of the day, the sentence
9 from the inmates are, I think, very, very, very powerful and
10 instructive. Here is a man who has never been in jail before,
11 who is put into an environment where if the Government really
12 checked to see what goes on there they wouldn't come up with
13 the snippet of conversation. They would realize that Martin
14 has suffered the serious lockdowns as a result of violence by
15 other inmates where the whole institution has to be
16 punished -- not being critical of the Bureau of Prisons,
17 that's their job to maintain order. But it's one thing to
18 read about violence, one thing to see it on television, and
19 one thing to be surrounded by it 24/7 in a way that is
20 powerful and frightening.

21 When Martin tells the world in the midst, I'm doing
22 okay, it's because he doesn't want his parents, who have their
23 own concerns, to stay up at night worrying. He's not okay;
24 he's in a violent place.

25 I understand he brought this upon himself. I'm not

1 blaming you. But I'm suggesting that as a result of that
2 remand, it's something we will address in the letter to the
3 Court after the sentencing before the judgment of conviction
4 is finalized when we ask for a recommendation, but as a result
5 of being remanded, based on the BOP's expert that we put
6 forward, an affidavit from Joel Sickler. Martin now is deemed
7 to be a safety concern. So that as a result, he is no longer
8 in his judgment, absent some movement, he is no longer
9 eligible to be serving his time in a camp. The difference is
10 extraordinary between a camp and even a low. And that's as a
11 result of him being remanded and being classified on that
12 remand as a danger to the community. What otherwise would be
13 a voluntary surrender and a camp facility, that he would
14 certainly qualify for as a first offender in a non-violent
15 place, he will most likely serve his sentence in another
16 violent place. And I ask, your Honor, to factor that into the
17 equation.

18 THE COURT: Are you asking me to vacate my prior
19 findings about the reasons that I remanded Mr. Shkreli?

20 MR. BRAFMAN: I'm going to be asking you that in a
21 letter to the Court after the sentencing. A lot depends on
22 the severity or lack of severity of the sentence. Because
23 depending on the size of the sentence he may or may not be
24 eligible for a more modified level of security. So I'm not
25 asking for it today. But what I am asking for today is that

1 when you decide how much more time Mr. Shkreli has to serve, I
2 want you to know that he's already served six months in
3 equivalent of a maximum security prison. And that's hard time
4 and it's a dangerous place.

5 Even though we did not come here two weeks after he
6 was remanded and beg you to release him. We did not revisit
7 the issue of his remand in the last six months. We did not
8 want to burden the Court or ask you to change your mind; we
9 accepted it. I think probably from Martin's perspective he
10 now understands your Honor's decision better than when he made
11 the stupid comment; and so do I, quite frankly.

12 And at the end of the day, it's one thing to say to
13 a defendant I'm sentencing you to 36 or 60 months and you're
14 eligible for a camp. I'm going to recommend the camp, and you
15 go to a camp, and everybody around you is a white-collar
16 person who has no violence in their history, and they are sit
17 around all day playing chess. And Martin Shkreli is in a real
18 prison. Martin Shkreli didn't commit a violent crime so that
19 the rest of his sentence should be factored into that security
20 level, but that's for another day.

21 What I'm trying to suggest, Judge, is that when you
22 sentence Mr. Shkreli, it's real prison. So far it's been real
23 prison. I don't think that Mr. Shkreli despite the fact that
24 sometimes he says stupid things and despite the fact that
25 sometimes he does stupid things, when at the end of the day

1 Martin Shkreli doesn't belong there. He certainly doesn't
2 belong there for a significant period of time.

3 I want to end with just one observation. I
4 appreciate the fact that the Court has allowed me to go on for
5 this long.

6 The Government suggests that Martin Shkreli doesn't
7 have remorse, that Martin hasn't expressed remorse. I want to
8 also reference some of things they said that they want you to
9 hold against Martin. For example, when he said to the media
10 when we walked out the building, and I want to shoulder part
11 of the blame for that.

12 When we got the verdict, I submit with the great
13 respect, that everybody in this courtroom was a little bit
14 stunned. I think we were stunned because the fact is that the
15 baggage that he came to the table with, we were concerned that
16 even if we tried a good case, even if we presented evidence,
17 it was too powerful to overcome. I said so much in my
18 summation. I was hoping they wasn't use the Shkreli current
19 to drown out all the reasonable doubt.

20 When we left the building, and at the time before we
21 really had an understanding of how your Honor would compute
22 the loss. There were those among us, despite all of our
23 experience, that believed there might be a way to calculate
24 the loss, that there might be a zero loss, there might not be
25 a 20-level enhancement. Because he was acquitted of,

1 everybody saw the main money count.

2 So, yes, we left the building. We felt good. And
3 Martin was grinning into the camera, and so was I to be
4 perfectly candid. Because at the end of the day, I've had a
5 lot of acquittals in my life in this building. I felt very
6 proud of the work in the Shkreli verdict. And to be honest
7 with you, I think it's some of the best work that we
8 collectively did, and we were very proud. When we left the
9 building, in that euphoric moment, yes, you can see Martin
10 Shkreli grinning. You can also see the Government standing
11 with long faces and very upset, despite the fact that they had
12 three counts of conviction.

13 We get beyond that. It's now six months, seven
14 months after the verdict. Martin has had remorse smacked into
15 his head everyday that he wakes up and he's not able to leave
16 his cell, or he's not able to take a shower, or when he's told
17 when he can go to the bathroom, or when he see another inmate
18 knife another inmate, and he's an objector until the whole
19 thing gets resolved.

20 He understands and we've explained to him, that you
21 are -- we are going to be filing an appeal. You have a right
22 to appeal. And this is one of the most interesting cases, I
23 think, we've ever been involved with. There may be some live
24 issues, in our opinion. And at the end of the day you have to
25 be careful of how you express remorse. So you can't say, I'm

1 guilty and I should go to jail, and I'm really sorry. Because
2 if you do of that the Second Circuit will use it, quite
3 frankly, and it's there.

4 So to the extent that Martin hasn't expressed the
5 kind of I'm sorry that the Government demands, I'm sorry that
6 he hasn't done that. Blame lawyers who are trying their best
7 to preserve his legal issues.

8 Judge, I'm done unless you have specific questions.

9 I don't know what you're going to do. I've been up
10 for days thinking about it and worrying about it. And I come
11 to the courtroom in somewhat of awe by the responsibility.

12 I have a friend who's an oncologist. He said to me,
13 you and I have a lot in common. I said what? Well, no one is
14 ever happy to come into your office and no one is ever happy
15 to come into my office. I said, I've never really understood
16 that, but I don't think we have anything in common in a
17 practical matter.

18 When you lose, they die. The family thanks God for
19 your effort. When we have a bad result, we have done our
20 best, we don't have the ultimate power to control, but
21 sometimes despite your best efforts, despite your skills and
22 despite what should be a good result you don't get to make the
23 final decision even if you're able to do the job that you're
24 supposed to be doing. Then if you're right, it's good. And
25 if you're not right, you get letters for a long time. And you

1 watch a very good person essentially die a slow death in a
2 place where hope is just not present.

3 And the interesting part is that with Mr. Shkreli in
4 the MDC I've seen him do good for people, in a hopeless
5 position. If he can do it there, he do it in a hospital, he
6 can do it in a research lab. We've indicated that he wanted
7 to work with people when they are released from prison because
8 he understands what it's like to be in prison. We've had
9 discussions with an agency who does that. And they don't us
10 to use their name because they haven't been able to personally
11 interview Mr. Shkreli, but that's what would happen.

12 If you accept our recommendation that you impose a
13 sentence that is a reasonable period of incarceration, and
14 reasonable, obviously, is something that only you can decide.
15 And then you couple that with what we suggest to be thousands
16 of hours of important community service, done under the power
17 and control and supervision of the Probation Department and
18 supervised release people, so you know that they are reporting
19 on his work and his progress. And you impose that as a means
20 to ensure that somehow the world benefits from someone who has
21 this potential.

22 I think, as many of the people have written you
23 suggests, I think it's better result certainly for Mr. Shkreli
24 but for a lot of other people who feel the same way, who don't
25 know him necessarily and yet have asked you to do exactly

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1 that.

2 Thank you, your Honor.

3 THE COURT: Thank you, Mr. Brafman.

4 Who would like be heard on behalf of the Government.

5 MS. KASULIS: I would, your Honor.

6 Just before I proceed in the normal course, usually
7 the Government is responding to what the defendant said. So
8 in the event that once Mr. Shkreli speaks, if the Government
9 does feel it needs to respond to one or two points, we ask the
10 Court's permission to do so.

11 THE COURT: Yes.

12 MS. KASULIS: May I approach the podium, your Honor?

13 THE COURT: Yes.

14 MS. KASULIS: Your Honor,, this Court has presided
15 over two trials in this case and the parties have made very
16 fulsome sentencing submissions. So I'm not going to belabor
17 and do a rehash of everything that we argued already.

18 I do want to do the same that Mr. Brafman did, to
19 thank the Court for her attention to detail, to take the time
20 to be prepared throughout the entire course of these
21 proceedings. We, as the Government, very much appreciate your
22 efforts, your Honor.

23 There are a few points that I would like to respond
24 to from what Mr. Brafman argued to the court today.

25 THE COURT: Would you start why you think 15 years

1 is reasonable; and what Mr. Brafman has described.

2 MS. KASULIS: We think the 15 years is reasonable.
3 And you know, your Honor, it's not typical for our office to
4 deviate from recommending a sentence within the guideline
5 range. So we didn't just make that number up. We think it's
6 appropriate for a number of reasons.

7 I think the first is that Mr. Shkreli is a convicted
8 criminal. We didn't say, oh, your Honor, he needs to be
9 sentenced to 15 years because he's called the most hated man
10 in America, he's difficult, or off, or strange. We are
11 recommending that sentence because he was convicted of three
12 of the four fraud schemes for which he was charged. And your
13 Honor found by a preponderance that the Government proved that
14 he did in fact commit the fourth fraud scheme with which he
15 was charged. And those fraud schemes were over the course of
16 five years, your Honor. It was to the tune of millions of
17 dollars of loss with respect to each one of those frauds.

18 So this is not an isolated lapse of judgment, for
19 example, that one may argue took place in an insider trading
20 case, for example, or one pump-and-dump scheme that the
21 defendant is responsible for. This is four different fraud
22 schemes over the course of five years, that was act, after
23 act, after act, after act, lies and deceit in furtherance of
24 each of those schemes. That is why, in part, we believe that
25 15 year sentence is appropriate.

1 Secondly, your Honor, as part of 3553(a) analysis
2 what is also important are the history and characteristics of
3 the defendant. That is also critically important here.

4 Because time and time again, Mr. Shkreli seems to
5 not understand exactly why he's here, the magnitude of the
6 crimes that he's committed, and he has no respect whatsoever
7 for the law or for this process, for any of these proceeding
8 that have taken place before the court. And what Mr. Brafman
9 wants to do is say, your Honor, please just focus on the good
10 acts, don't look at everything else that Mr. Shkreli has done,
11 all the bad acts, all the things that he has said, just look
12 at the good things, your Honor, because that is who
13 Mr. Shkreli is. What people have said about him is what you
14 should consider, not Mr. Shkreli's own words, his own acts.

15 All of that is fair game, your Honor, for, your
16 Honor, to consider what he did. And that is the record that
17 you have before you. That is the best indicator, Judge, of
18 who Mr. Shkreli is. And it's the best indicator of what he is
19 going to do in the future. It is his whole life up until this
20 very point in time, what he has done, and what he has said.
21 And that, your Honor, is what we're relying upon.

22 As you know, our sentencing submission frankly could
23 have been a lot worse, Judge, but what we really tried to do
24 here is focus and rebut the image that Mr. Behalf had painted
25 to the Court as to who Mr. Shkreli is. There is so much more

1 in the public record. We can go through the years of tweets,
2 et cetera, that we could have. We really tried to focus,
3 Judge, on what Mr. Shkreli has said and done that paint a
4 broader picture, a more accurate picture, of who Mr. Shkreli
5 is.

6 Your Honor, we're not saying that he is a bad person
7 with a capital B. Or that he is the devil. Or that you
8 should just ignore the fact that he has done good acts. He
9 has done good acts. If anything, his good deeds show that he
10 has the capacity to make good choices; he just choses time and
11 time and time again not to do that.

12 I do want to focus, your Honor, on what Mr. Shkreli
13 in fact did in this case. We have said over and over again
14 that he lied repeatedly with impunity to countless victims.
15 He violated people's trust. These were not just knee jerk
16 reactions, not a moment in time, statement that he made in
17 response to stress. This was something that he did time and
18 time again. He tailored those lies. He tailored what he said
19 to each victim, because he knew what they wanted to hear. He
20 knew what he was doing.

21 This was not about just looking at the world through
22 rose-colored glasses and saying the same thing over and over
23 again to each of his victims. He knew what he was going to
24 say to each person to manipulate and pull the wool over their
25 eyes. And that's in fact what we proved at trial that he did.

1 These are not victimless crimes. He stole from his
2 investors. And then your Honor found by a preponderance that
3 he in fact stolen million dollars from Retrophin, the company
4 that Mr. Brafman characterized as his baby. He stolen million
5 dollars from his baby. That money could have gone to research
6 and development to cure the very diseases that Mr. Shkreli
7 supposedly feels so passionately about, devoting his life's
8 work to. That's what that money could have gone to, not to
9 cover up his fraud as he continued to dupe people and hide the
10 crimes.

11 These are not victimless crimes, Judge. He was
12 successful in covering up his fraud. And then Retrophin
13 ultimately became successful enough that he could steal that
14 money and pay people back. This is not a victimless crime.
15 The Government contests the characterization of these crimes
16 in this case, as having no victims whatsoever.

17 This case is also about why Martin Shkreli stole
18 money for his personal benefit. We've heard time and time
19 again that he didn't buy a fancy house, he didn't buy fancy
20 cars. We submit, your Honor, he did in fact steal the money
21 for his personal benefit. Because what motivated Martin
22 Shkreli is his own image. That image is so important to him.
23 He in fact even referenced his own image and the importance of
24 his own image in his letter to the Court. He wants everyone
25 to believe that he is a genius, a wiz kid, a self-taught

1 biotech wonder, the richest man in New York City. Without
2 that image, Martin Shkreli is nothing. That image is
3 everything to him.

4 Under no circumstances can he be just an average
5 person who fails like the rest of us, who has to take
6 responsibility for his actions. He needs to be mythical and
7 larger than life. He needs to be a rags to riches story. So
8 that image, we submit, your Honor, that image is his mansion,
9 it's his Maserati, it's his cars. Cultivating that image is
10 what is important to him above all else. Because he is
11 stealing money for his own benefit or he stole that money for
12 his own benefit, he is no better than any other fraudster.

13 I also want to address the notion that Mr. Shkreli
14 will never commit fraud again or that he is in fact truly
15 remorseful. This is a man who said mere months ago, your
16 Honor, in e-mails that he knew that we had access to and that
17 we could read. This is a man who said he will, quote, do
18 everything and anything to get the lowest sentence possible,
19 except for giving up the handful of Constitutional rights he
20 has. He knew we were going to see that, your Honor. He said
21 it any way. It's because it's what he believes. What he
22 wrote to the Court is I think nothing more than a half-hearted
23 attempt to convince, your Honor, that he's actually remorseful
24 and sees the errors of his ways.

25 But what is so evident from his letter, Judge, is

1 it's the same refrain we hear time and time again from
2 Mr. Shkreli, about it's everyone's else fault, I'm
3 misunderstood, I could see how out of context what I said may
4 have mislead people, it wasn't my fault, it has nothing to do
5 with me. And, your Honor, I think we've just proven at trial
6 it's absurd, absurd, for him to maintain that position and to
7 standby what he's saying to the Court. He refuses to take
8 responsibility for his actions because he doesn't want to. He
9 doesn't think that he did anything wrong, because he thinks
10 he's different and better than the rest of us and the rules
11 shouldn't apply to him.

12 What is the clear from Mr. Shkreli's conduct leading
13 up to the trial, during the trial itself, and after the trial
14 is he has no respect for this process. He mocked the victims.
15 He mocked the prosecution during the trial. And your Honor
16 issued her order to prevent him from doing that. He did, your
17 Honor, behave after that. Because Mr. Brafman's team, very
18 admirably, made sure that a member of their team was with him
19 at all times in the courthouse. He had to be babysat in order
20 for him to make sure that he could actually behave per the
21 Court's order.

22 I also want to make clear that Mr. Shkreli is not a
23 child. Mr. Brafman wrote, stated, quote, he's fundamentally a
24 good kid who sometimes does aggravating things. Mr. Shkreli
25 is about to turn 35 years old. He's not a child. He's a man.

1 He's not a teenager or a college kid who just needs mentoring,
2 guidance, and focus. He's a man who needs to take
3 responsibility for his actions.

4 After his verdict he immediately resumed attacks on
5 the criminal justice system. He mocked the jury who sat and
6 heard and focused for a six-week period of time and did their
7 job admirably. He had went back to harassing people online.
8 And, your Honor, correctly ruled that what he was doing in
9 fact posed a danger to the community. He even stated that
10 your Honor was just going to give him a slap on the wrist. He
11 stated that openly, he knew your Honor would hear it.

12 And again, we go back to the e-mails. Because I
13 think the e-mails are so telling, your Honor. Those e-mails
14 were up until the mere weeks ago. He says things like, he's
15 going to get probation, a light sentence, he'll serve his time
16 in Club Fed. He basically assumes that, your Honor, is going
17 to be fooled by his gestures towards remorse.

18 Those e-mails are devastating because they are true
19 snapshot of what Mr. Shkreli actually believes. This is him.
20 He needs to be sentenced for who he is. You can't say, ignore
21 this, but think about that. This is Martin Shkreli, the good,
22 the bad, and the ugly. This is the record that is before your
23 Honor, when, your Honor, is considering how to sentence him.
24 This is the man. These are the actions. These are the words
25 that, your Honor, must consider in rendering her sentence.

1 He continues to think that this is all just one big
2 joke, that, your Honor, is going to give him a slap on the
3 wrist. MDC does not seem to have affected him. He thinks
4 he's getting out in six months. He's going to do his time and
5 get out of jail tomorrow, and that's that. But, your Honor,
6 what we submit is a significant jail sentence of no less than
7 15 years, is appropriate because the public needs to be
8 protected from Martin Shkreli. We do believe, your Honor,
9 that he is dangerous, that he victimizes people without
10 thinking twice about it. That he still maintains to this day
11 that the ends truly do justify the means.

12 And he does not deserve special treatment, your
13 Honor, from this Court. With respect to the psychological
14 examination, we didn't even think we needed to get our own
15 examination of Mr. Shkreli. Because, frankly, what the report
16 said is there is really nothing wrong with him. He suffers
17 from depression and anxiety, as many, many, many high
18 functioning people do, your Honor, who are smart and who have
19 stressful jobs, who live in New York City, who experienced
20 9/11. He's no different than many, many people. And those
21 conditions of anxiety and depression do not warrant committing
22 crime. They don't excuse it.

23 Just to be clear, Mr. Shkreli is getting
24 pharmacological treatment at the MDC. That is something that
25 is contained in the PSR. He's also an individual who's

1 upbringing may have been challenged, just as many people's
2 upbringing was challenged. Many people have old-world
3 parenting styles that they dealt with in their youth. But
4 what we do know is that Mr. Shkreli has had the unwavering
5 support of his family. They are here in the courtroom.
6 Mr. Shkreli's father was here throughout the trial. And
7 that's a lot more, frankly, your Honor, than a lot of
8 defendants have in this courthouse. What was particularly
9 alarming about the psychological evaluation was that it was
10 clear that Mr. Shkreli cannot tolerate failure and will
11 instead lie and rationalize his failures to perpetuate his
12 self-image. That is devastating, your Honor. And we urge,
13 your Honor, to strongly consider what Dr. Salsberg said about
14 Mr. Shkreli's mental makeup, how he reacts to situations that
15 challenge that self-image. That's not a mental health issue.
16 It is a personal characteristic of the defendant and it does
17 not appear that he has any desire, whatsoever, to change that
18 character.

19 There have been some reference, your Honor, to not
20 incarcerating Mr. Shkreli to a significant term of
21 imprisonment because the future of mankind with respect to
22 curing terrible diseases hangs in the balance. And he has all
23 this potential. The Government's position, your Honor, is a
24 significant term of imprisonment is not going to deprive the
25 world of cures to multiple rare childhood diseases.

1 There was a letter that Mr. Brafman quoted from an
2 individual, Pedro Machado, who does in fact himself have an
3 incurable disease. I do want to note, your Honor, that
4 Mr. Machado did in invest in Retrophin. He invested \$400,000
5 in January 2013 and that money went directly to Mr. Greebel,
6 his co-conspirator, and his crimes to pay his outstanding
7 bills.

8 If you look at record before you, the only reason,
9 your Honor, we even brought up the drug hike -- and I think we
10 really tried not to make that a focus of this trial. I don't
11 think it was a part of the trial, period. We didn't try
12 through multiple maneuvering to put it before the jury, when
13 frankly we probably had a bases to raise it considering some
14 of Mr. Brafman's arguments about Mr. Shkreli. But we didn't
15 want to do that. We wanted this case to be about the crimes
16 that Mr. Shkreli committed, not Mr. Shkreli in the public
17 arena. But we did bring up the drug price hike issue, your
18 Honor, because it is clear from Mr. Shkreli's own words that
19 what motivates him in the working drug world is making money.
20 That's what he said. He can't get away from those statements,
21 because that is what he said, that is what he means, that's
22 what he's proven that he believes time and time again.

23 He may have some good idea. He may be very smart.
24 We're not challenging that. But what we have seen as well is
25 that he lacks the ability to follow through on those ideas.

1 That's what his companies in the aftermath of Mr. Shkreli have
2 attempted to do, to pursue those FDA trials, to try to get
3 these drugs to market for people who really need them. Once
4 Mr. Shkreli actually is steps aside and lets them to do what
5 they need to do, to try to help the patient population. And
6 there is nothing illegal about what Mr. Shkreli did with
7 respect to the drug hikes. But I just want to be clear that
8 we should all recognize that Mr. Shkreli is not somebody who
9 is purely altruistic and is here to save mankind. That he's
10 in fact going to make sure that all of these incredibly
11 vulnerable people who are facing horrible situations with
12 respect to themselves and their children, that he is going to
13 be their savior. He's not that person. It's an insult to the
14 doctors and scientists who spend their whole lives trying to
15 cure and treat the diseases without trying to line their own
16 pockets in the process.

17 With respect to the letter from Dr. Trachtman that
18 was submitted to the Court last night. We do want to note for
19 the record that Dr. Trachtman is, quote, the Martin Shkreli
20 Professor of Pediatric Nephrology NYU. We do urge, your
21 Honor, to read his letter through that lens.

22 THE COURT: Do you mean that Mr. Shkreli funded his
23 position?

24 MS. KASULIS: That is right, your Honor.

25 My final point is this, Judge, this case is also

1 sending a broader message. It's about sending a message to
2 our society that you can't lie to people for years and rip
3 them off and then steal from somewhere else to pay them back
4 and it's just all okay. That's a message that needs to be
5 sent, Judge.

6 Another message that needs to be sent is that you
7 had can't make a mockery of our Criminal Justice System. That
8 you then you can't steal from people and lie and claim that
9 you're special and you then get to avoid the consequences of
10 the course of your actions. You don't get to cherry pick who
11 you are before the Court. You have to stand before the Court
12 as a whole. You have to own all of who you are when you stand
13 before the Court and face a sentence. And you can't
14 manipulate this Court to get out from under your crimes.

15 So Mr. Shkreli made the choice over and over again
16 to lie for years to benefit no one but himself. He's not a
17 child. He's a full-formed man. And he needs to be stopped.
18 Society needs to be protected.

19 And that is why, your Honor, we believe that a term
20 of imprisonment of no less than 15 years is appropriate here.

21 Thank you, Judge.

22 THE COURT: Thank you. Mr. Brafman or Mr. Shkreli,
23 do you want to be heard at this time?

24 MR. BRAFMAN: Would you object if he were able to
25 sit down?

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1 THE COURT: That's fine. You can speak from the
2 table.

3 THE DEFENDANT: Thank you, your Honor. Your Honor,
4 thank you for the opportunity to speak directly to you.

5 Before I continue, I want to acknowledge my family
6 and friends, many of whom flew across the country to be here.
7 Thank you for your support. My mother, who I haven't spoken
8 to for sometime, I love you. I miss you. Please don't worry
9 about me.

10 Grave mistakes, poor judgment have led me to be here
11 today. My biggest regret is getting good and innocent people
12 mixed up in my bad conduct, my mistakes. To me a mistake is
13 something you wish you never did, because you knew it was
14 wrong at the time.

15 I made many mistakes imaging the MSMB funds. I look
16 back and I'm embarrassed and ashamed. I'm not sure I
17 recognize the person who wrote the \$35 million AUM email in
18 2010. I have to live with that mistake and its consequences.

19 What led me to write that e-mail, as I believe the
20 prosecution's absolutely correct, or as importantly to not
21 send, follow up e-mail, correcting or explaining. It's a
22 painful embarrassment.

23 I was never motivated by money. I wanted to grow my
24 stature and my reputation. I know now that when you e-mail
25 something that looks direct, but you know the truth is

1 something requiring explanation, you owe it to that person to
2 explain it so they know everything you know and they are not
3 mislead. That's just one example of my disgraceful judgment
4 at this time.

5 In the 2015, years after MSMB, I started a new
6 pharmaceutical company based with the major fundraising I took
7 no chances. While our PPM had risk disclosures, I demanded
8 every investor sign and initial every page of the supplemental
9 disclosure detailing SEC and DOJ investigations, Retrophin
10 lawsuit, which mirrors the Indictment in this case. We ended
11 up raising \$100 million, which at the time was the fifth
12 largest financing for a new drug company funded almost
13 completely by Retrophin's largest investors who were happy
14 with my success at that company.

15 (Continue following page.)
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1 MR. SHKRELI: (Continued) I'm telling you this
2 long story because I've learn. I'm not the same person I
3 was during the MSMB era. I know right from wrong. I know
4 what it means to tell the truth and what it means to lie.
5 My intuition and experience has grown substantially since
6 then. I still have work to do to ensure that I complete
7 this improvement and resolve the other issues and feelings.
8 I am very pleased to hear that the Court is not holding my
9 personality on trial. I am here because of my gross,
10 stupid, and negligent mistakes I made at MSMB.

11 This would be a good time to apologize to all the
12 limited partners of MSMB. I am terrible sorry I lost your
13 trust. They deserve far better. I know some of you
14 privately and publicly support me. Despite that you should
15 know that I did not act appropriately or even close to a
16 reasonable standard that I could be proud of.

17 I want the people who came here today to support
18 me to understand one thing: The only person to blame for me
19 being here today, is me. It's not the Government. There is
20 no conspiracy to take down Martin Shkreli. I took down
21 Martin Shkreli with my disgraceful and shameful actions.
22 The Court is not to blame, the Court ruled very fairly, no
23 witness or attorneys, no piece of evidence, it's not the
24 conscientious jury, not the media.

25 Many of you who love me, support me, and look up

1 to me should reassess your position. Do not feel bad for
2 me. This is -- excuse me -- this is fault. I am not a
3 victim here. I'm the convicted defendant. If I was more
4 transparent earlier and direct with my investors, I wouldn't
5 be here.

6 I wrote a long and extensive rebuttal and
7 apologies for the various gaps I've made over the years. I
8 I'm not going to recite them. I think Mr. Brafman did a
9 good job of articulating why exactly I behave the way I
10 behave. I believe the prosecution has mischaracterized many
11 of the things I've done and some of the things in the
12 sentencing memorandum are, in fact, categorically and
13 unequivocally false. Despite that, I'm not going to be
14 baited into going in the market and battling every single
15 point. For instance, the IRA numbers, which are completely
16 wrong. The PKAN characterization, which is unequivocally
17 incorrect and over examples that are too numerous to list.
18 It is not my job to do that. The time for debate in
19 litigation is over.

20 The people who wrote letters supporting me know
21 the real me. I know the real me. I don't think
22 the Government knows the real me. In fact, I don't think
23 the real me is a collage of characteristics and Orwellian
24 snippets collected over the years or even over the recent
25 period that display me in the worst light possible. To take

1 the worst, as Mr. Brafman said, of a person's correspondence
2 and claim that it's their whole, I think it's fundamentally
3 and intellectually wrong.

4 I move on to conclude here. I want to close by
5 saying that as I look at the long road ahead for me, I want
6 to make sure that I get the tools to rehabilitate and
7 succeed. The psychology in part is a stunning revelation to
8 me. I am receptive to happy because I don't want to let
9 anyone down again. My father told me once that there is a
10 silver lining in everything. After feeling the
11 disappointment in adolescence -- or after feeling like a
12 adolescence, just a little bit of engagement after a life of
13 abuse was energizing for me. But I got carried away and
14 lost much of my compass. I wanted to be a success in the
15 business world while being very young and immature. There
16 is still so much more I can do, and I will do it, the right
17 way.

18 Part of doing this the right way is surrounding
19 yourself with good people. Mr. Brafman has been an
20 unexpected and extraordinary blessing in my life, not just
21 because of his effective advocacy, but because he believes
22 in me. He advises me and mentors me. As I improve my
23 intuition for business and business ethics, I can lean on
24 him for help. He knows my corporate attorneys and my tax
25 attorneys that I've worked with and he has helped me to

1 build a good network of advisors that will guide me to
2 better days. I owe it to him to not let him down. I will
3 never make him regret the effort he has undertaken on my
4 behalf.

5 Prison has been a life-changing experience. I'm
6 not going to complaint about life in jail. The hardest part
7 is really seeing this sad world around you. There's a very
8 sad world around me for the first time. I took comfort in a
9 suicidal inmate who has several felonies and incarcerated
10 life as in showing a man who didn't attend high school that
11 they can go from accounting to calculus if they work hard
12 enough and have a teacher they can trust. This has been a
13 life-changing experience for me. And having the ability to
14 help these inmates is a silver lining. Because of the
15 support letters, Your Honor knows I love to teach and help
16 people in need. I have a calling that energized me far
17 greater than any Internet or antic scam. These inmates know
18 me. They like me and trust me. I speak their language. I
19 grow up in similar conditions in many cases and they can
20 identify with me. With Your Honor's mercy, I pray that I
21 have a chance to be released soon, to begin community
22 service with the group of people after they are released
23 from prison. I don't see this as a quota of hours to be
24 met, but like my own line educational work, a helpful and
25 healthy lifelong passion, a unique gap that I can fulfill

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1 people lives and contribute to with my business successes.

2 Please give me a chance to show what I am capable of.

3 Thank you.

4 THE COURT: Thank you.

5 Mr. Brafman, did you want to be heard further,

6 sir.

7 MR. BRAFMAN: No, Your Honor.

8 THE COURT: Does the Government?

9 MS. KASULIS: No, Your Honor.

10 THE COURT: All right. Thank you.

11 I note that Mr. Shkreli has acknowledged the
12 presence of his friends and family members. I am aware that
13 that his father came every day to court. I also know that
14 there was some difficult family circumstances in
15 Mr. Shkreli's childhood. I have read all of the letters
16 written by Mr. Shkreli's friends, supporters, and family
17 members, and I will assure you that I am grateful for those
18 letters. They give me a more wholistic view of who
19 Mr. Shkreli is beyond the charges for which he stands
20 convicted. I have also read the letters that were
21 unsolicited, some of which were supportive of Mr. Shkreli
22 and others which asked for punishment for reasons that are
23 beyond the scope of this case. In any event, I will share
24 Mr. Brafman's problems with insomnia. This is not an easy
25 decision by any means.

1 I would like to review the presentence report and
2 its calculations under the advisory guidelines. The PSR
3 calculated Mr. Shkreli's advisory guideline total adjusted
4 offense level at 41, his criminal history was 1, and the
5 corresponding guideline range of imprisonment was between
6 324 and 405 months. The PSR noted that the maximum
7 statutory sentence is 20 years for each of Counts 3 and 6,
8 and 5 years for Count 8. The maximum total statutory
9 sentence is 45 years if the sentence were to run
10 consecutively.

11 Mr. Shkreli has made numerous suggestions to the
12 PSR, which I will address in a moment. He has right to
13 understand what my rulings are regarding his objections to
14 the extent the probation department has not accepted those
15 objections.

16 First with regard to the loss enhancement, he
17 objects to PSR's use of the 20 level enhancement level for
18 the loss amount. For the reasons stated in my February 26,
19 2018 memorandum and order, I will apply a loss amount of
20 \$2,998,000 on Count 3; \$3,402,450 on Count 6; and \$4 million
21 on Count 8. This results in a total loss amount of
22 \$10,400,450 and a 20 level enhancement under the advisory
23 guideline.

24 Further, Mr. Shkreli objects to the PSR's
25 application of the 2 level enhancement for a sentence

1 involving more than ten victims. I conclude that
2 enhancement of 2 levels for ten or more victims is
3 appropriate for two reasons: First, as I discussed in the
4 February 26, 2018 memorandum and order at Pages 85 through
5 88, Mr. Shkreli's victims include the MSMB Capital and
6 MSMB Health Care investors who sustained actual losses due to
7 Mr. Shkreli's misrepresentations and omissions. There were
8 seven MSMB Capital and 12 MSMB Health Care investors who are
9 victims of the offense of conviction in Counts 3 and 6;
10 thus, there 19 victims and a 2-point enhancement applies.

11 Furthermore, Mr. Shkreli avoided paying back these
12 investors, all of whom are repeatedly lied to by Mr. Shkreli
13 about their investments until the SEC had been alerted to
14 his scheme and several of his investors had threaten legal
15 action and public exposure of his scheme. In the interim,
16 theses investor did not have use of their funds resulting in
17 significant costs, including attorneys' fee, in some
18 instances, and loss of time. One investor, a recent
19 graduate, had invested one-third of her net worth into
20 Mr. Shkreli's MSMB Capital hedge fund based on Mr. Shkreli's
21 falsehoods.

22 Another investor estimates that he spent \$56,000
23 in legal fees to recover his funds from Mr. Shkreli and
24 points out that his investment returns are due in part to
25 his own investing decision and Retrophin success after

1 Mr. Shkreli left the company. Another investor notes that
2 there were significant shortfall between what he was
3 promised and what he was given by Mr. Shkreli in terms in
4 the interest in Retrophin.

5 Second, Mr. Shkreli objections to enhancement is
6 based on the false premise that the MSMB investors were not
7 victims because Mr. Shkreli later used Retrophin assets to
8 pay them back. Although I have decided in my discretion not
9 to include the lost amount enhancement attributable to
10 Count 7, of which Mr. Shkreli was acquitted, I will also not
11 credit Mr. Shkreli for misappropriating Retrophin assets to
12 repay MSMB investors. Mr. Shkreli argument that these 19
13 investors were not victims is specifically rejected.

14 Next, the presentence report applies a two point
15 sophisticated needs enhancement pursuant to Sentencing
16 Guideline Section 2B1.1(B)(10)(C). Mr. Shkreli argues that
17 the PSR based the application of this enhancement on conduct
18 charged in Count 7 of which he was acquitted. I conclude
19 that based on the count of conviction, the application of
20 the sophisticated means enhancement is appropriate separate
21 and apart from conduct charged in Count 7. The sentencing
22 guideline defines sophisticated means as especially complex
23 or especially intricate offense conduct pertaining to the
24 execution or concealment of an event. That's Guideline
25 2B1.1.(B)(10), Comment Note 9(B).

1 Among other acts, Mr. Shkreli used investments
2 into MSMB Health Care to funnel money into Retrophin but
3 then withdrew \$200,000 of that money to satisfy an
4 MSMB Capital investor. Months later, he fraudulently
5 recharacterized \$900,000 of the MSMB Health Care investment
6 as a loan to Retrophin enabling him to cause Retrophin to
7 transfer funds to MSMB Health Care. He then used
8 MSMB Health Care's money to pay a \$900,000 personal debt
9 that Mr. Shkreli owed to Merrill Lynch, because of a failed
10 trade at MSMB Capital.

11 With regard to Count 8, Mr. Shkreli, with the
12 knowledge and participation of his co-defendant, Mr. Evan
13 Greebel, arranged for Retrophin to undergo reverse merger
14 with Desert Gateway in part to permit Mr. Shkreli to acquire
15 control over more than 2 million free traded shares referred
16 to at trial as the Fearnow share. They then attempted to
17 control those shares through a series of complex
18 transactions in which the shares were purchased at nominal
19 cost and distributed to a select group of individuals
20 referred to as the Fearnow shareholders. The shares were
21 then transferred at Mr. Shkreli and Mr. Greebel's discretion
22 from the Fearnow shareholders, disgruntled MSMB investors,
23 and to Mr. Shkreli himself. Mr. Shkreli and Mr. Greebel
24 carefully orchestrated the distribution of the Retrophin
25 shares to the Fearnow shareholders and the subsequent

1 transfer of those shares to the MSMB investors using
2 sophisticated means to avoid detection of the connection
3 between MSMB or Retrophin and the straw purchases. These
4 complex transactions qualify as sophisticated means.

5 Next, the PSR applies a 4-point enhancement
6 pursuant to Sentencing Guideline Section 3B1.1(a) because
7 the probation department concluded that Mr. Shkreli was an
8 organizer or leader of criminal activity that involved five
9 or more participants or was otherwise extensive.
10 Mr. Shkreli argues that the PSR relied incorrect information
11 regarding the circumstances and conduct in Count 8 to
12 establish a leadership role enhancement. I conclude that
13 the leader and organizer role in the offense enhancement is
14 appropriate in this case.

15 As discussed in the February 26, 2018 memorandum
16 and order, Mr. Shkreli, along with Mr. Greebel, organized
17 the distribution and manipulation of the Fearnow shares.
18 Trial evidence showed that Merek Biestek, Kevin Mulleady,
19 Thomas Fernandez, Ron Tilles, Andrew Vaino, and Edmund
20 Sullivan participated in Mr. Shkreli Mr. Greebel's scheme to
21 control the Fearnow shares.

22 The PSR also applied a 2-point enhancement for
23 obstruction of justice pursuant to Sentencing Guideline
24 3C1.1. The PSR references Mr. Shkreli's statements in
25 response to an SEC *subpoena* that, among other things, quote,

1 "MSMB Capital was still active and had \$2.6 million in
2 assets under management." Mr. Shkreli argued that he
3 complied in every respect with the SEC's investigation and
4 that the obstruction of justice enhancement should not
5 apply. The Government has also noted that Mr. Shkreli made
6 over misrepresentations to the SEC in the course of the
7 SEC's investigation, specifically, in Mr. Shkreli's
8 testimony to the SEC in August 2013 and February 2014.
9 The Government relies in part on exhibits not introduced
10 into evidence at trial. Although, I agree with
11 the Government that Mr. Shkreli lied to the SEC, I conclude
12 that an enhancement for obstruction of justice is not
13 appropriate in this case on the facts presented to the
14 Court. The relevant Sentencing Guideline Section 3C1.1
15 applies, quote, "if one, the defendant willfully obstructed
16 or impeded or attempted to obstruct or impede the
17 administration of justice with respect to the investigation
18 of the instant offense of conviction, and two, the
19 obstructive conduct related to the defendant's offense of
20 conviction and any relevant conduct or closely related
21 offense."

22 The guidelines also explain the "obstructive
23 conduct that occurred prior to the start of the
24 investigation of the instant offense may be covered if the
25 conduct was purposely calculated and likely to thwart the

1 investigation or prosecution of the offense of conviction."

2 That is Guideline 3C1.1, Comment Note 1.

3 The record before this Court does not reveal the
4 relationship, if any, between the SEC's investigation
5 between 2012 and 2014 and the FBI's investigation and the
6 instant offenses of conviction. It is not clear when the
7 FBI investigation that led to this prosecution formally
8 began. Nor does the Court have a sufficient basis for
9 concluding that Mr. Shkreli's actions with regard to the SEC
10 were purposefully calculated or likely to thwart the
11 investigation of an instant offences of conviction;
12 therefore, the obstruction of justice enhancement will not
13 be applied when I calculate Mr. Shkreli's offense level.

14 Mr. Shkreli also makes numerous objections to
15 statements of facts in PSR. First with regard to
16 Paragraph 5, he objected to the PSR's reference to
17 statements he made about journalists Lauren Duca and Anna
18 Kasperian with respect to the reasons he was remanded into
19 custody. As I explained on the record when I remanded
20 Mr. Shkreli after a jury had found the defendant guilty, the
21 Court generally and presumptively shall remand or detain
22 defendant unless I find by clear and convincing evidence
23 that this defendant does not present a danger to the
24 community. Notwithstanding the presumption in favor of
25 remand after Mr. Shkreli was found guilty of Counts 3, 6,

1 and 8, I initially permitted Mr. Shkreli to remain at
2 liberty. During the remand proceeding, the Government
3 raised the issue of Mr. Shkreli's statement of his
4 intentions to engage in nonconsensual sex with Ms. Duca and
5 Ms. Kasulis. However, I recognize the distinction between
6 Mr. Shkreli's own statements concerning his own conduct
7 regarding these reporters and his solicitations from his
8 many social media followers of violence against a public
9 figure in exchange for money. I concluded then that
10 Mr. Shkreli had solicited violence against former Secretary
11 of State and First Lady Clinton, a public figure, and that
12 there was a heightened risk of violation against her given
13 his tens of thousands of social media followers and his
14 history of making offers to people to take auction in
15 exchange for money.

16 Indeed, the defendant submitted a letter from a
17 former Princeton student who attended a conference -- or a
18 lecture at which Mr. Shkreli offered payment of tuition in
19 exchange for a solution to a mathematical proof. Although
20 Mr. Brafman argued in connection with his motion to
21 modify -- in connection with his argument against revocation
22 of his bail, that Mr. Shkreli made preposterous promises
23 that are never paid forward, the former student's letter
24 indicated that Mr. Shkreli did make payment once the
25 student's proof was validated.

1 Certainly, Mr. Shkreli's threats prompted the
2 Secret Service to investigate and enhance protection of
3 Ms. Clinton as she was prepared to engage with the public on
4 a book tour. Although the Court was made aware in the
5 Government's motion to revoke bail of Mr. Shkreli's
6 escalating pattern of threats and harassment, including, but
7 not limited to unwelcome and offensive sexual threats that
8 he made about Ms. Duca and Ms. Kasperian, my decision to
9 remand Mr. Shkreli was based on my determination that
10 Mr. Shkreli's widely circulated solicitation of violence
11 against Former Secretary Clinton in exchange for \$5,000 for
12 a strand of hair with follicles created a risk of danger to
13 her and the public, and that Mr. Shkreli could no longer
14 overcome a prosecution in favor of remand following a guilty
15 verdict. Thus, Paragraph 5 accurately states that
16 Mr. Shkreli was remanded to custody on September 13th, 2017
17 after the Court found that he did not show by clear and
18 convincing evidence that he did not pose a danger to any
19 person and the community.

20 Next with regard to Paragraph 7, Mr. Shkreli
21 contends that the PSR erred in stating that Mr. Shkreli
22 serve as Retrophin Incorporated's CEO from approximately
23 December 2012 to through September 2014. Mr. Shkreli's
24 proposed correction does not distinguish between Retrophin,
25 Inc., the public company, and Retrophin, LLC, the private

1 company, of which Mr. Shkreli was interim CEO. The PSR is
2 accurate as it only references Mr. Shkreli's role as CEO of
3 Retrophin, Inc., the public company.

4 Mr. Shkreli next objects to Paragraph 8 reference
5 to a personal investment in MSMB Capital. As the Government
6 points out, Mr. Shkreli did tell an MSMB Capital investor,
7 Lindsay Rosenwald, that as of September 2009 MSMB Capital
8 was 100 percent our money. Mr. Shkreli also objects to the
9 PSR's reference to a failure to disclose his losses in
10 managing Elea Capital hedge fund. Mr. Shkreli states that
11 Darren Blanton, one of his MSMB Capital investors was aware
12 of the judgment arising from the loss at Elea Capital.

13 Mr. Blanton, however, testified that he was not aware that
14 Elea Capital has lost all of its money. Furthermore that
15 one of Mr. Shkreli's investor discovered through his own due
16 diligence rather than disclosure by Mr. Shkreli that there
17 was what he believed to be a trading misunderstanding
18 relating to Elea Capital, did not deter any material
19 omission by Mr. Shkreli regarding Elea Capital.

20 Next Mr. Shkreli objects to the PSR's statement at
21 Paragraph 12 that he concealed MSMB Capital's true
22 performance from his limited partners noting that he had
23 mentioned the Orex trade to Mr. Blanton. As I have
24 previously discussed, however, Mr. Shkreli concealed the
25 total loss incurred as a result of the Orex trade from his

1 MSMB Capital investors. Although he made a partial
2 disclosure about the loss to Mr. Blanton, he continued to
3 send Mr. Blanton performance reports after the loss showing
4 positive returns leading Mr. Blanton to believe that
5 everything was okay.

6 And that was his testimony of February 26, I'm
7 sorry his testimony which was referenced in my February 26th
8 memorandum.

9 In Paragraph 14 of the PSR Mr. Shkreli takes issue
10 with a statement that on September 15, 2012, Mr. Shkreli and
11 Mr. Biestek admitted in the course of a settlement with
12 Merrill Lynch that MSMB Capital had zero in assets.

13 Mr. Shkreli states that the document in question accurately
14 specified that MSMB Capital had zero in cash and equivalent
15 and reiterates its claim that Retrophin was an asset of
16 MSMB Capital. The Government responds that during the
17 settlement negotiation with Merrill Lynch, Mr. Shkreli
18 provided a schedule of the approximate value of his own and
19 MSMB Capital's assets, cash and equivalent. Mr. Shkreli
20 represented that he had \$1,415 in personal assets, cash and
21 equivalent and that MSMB Capital had zero.

22 The Government correctly asserts that taken as a
23 whole, Mr. Shkreli's disclosure to Merrill Lynch was a
24 representation and warranty that MSMB Capital had no assets,
25 cash or equivalent on September 5, 2012.

1 Next Mr. Shkreli disputes statements in
2 Paragraphs 15 and 19 in connection with Mr. Shkreli's
3 September 10, 2012, wind-down e-mail to MSMB Capital and
4 Healthcare investors. The PSR notes that Mr. Shkreli
5 misrepresented the liquidity of both funds. The Government
6 responds that Mr. Shkreli's objection states reargument of
7 evidence presented at trial. Mr. Shkreli argues that his
8 wind-down e-mail reflected an error in judgment which cannot
9 be equated with intentional fraud but he was simply
10 optimistic that Retrophin would soon receive an infusion of
11 cash from Valiant Pharmaceuticals. Mr. Shkreli's
12 representations in a wind-down e-mail are an example of the
13 pattern of lying to its investors about the performance and
14 liquidity of the funds. Following the wind-down e-mail the
15 investors who requested cash redemption faced significant
16 difficulties in redeeming their investments. Moreover,
17 Mr. Shkreli's optimism that Retrophin would receive a cash
18 infusion suggests that Mr. Shkreli was planning to take
19 money from Retrophin through its investors to repay
20 MSMB Capital and Healthcare investors but he provides no
21 explanation for how the transfer of anticipated funds from
22 Retrophin investors to MSMB Capital and MSMB Healthcare
23 investors could have been made in an illegitimate manner.
24 Suggestions to Paragraphs 15 and 19 are expressly denied.

25 Next Mr. Shkreli objects to Paragraph 16 of the

1 PSR and its reference to the misrepresentation and omissions
2 made to MSMB Healthcare investors whose did not testify at
3 trial. As I have explained in multiple rulings the test for
4 materiality in the criminal securities fraud case is
5 subjective, not subjective. In other words, what would a
6 reasonable investor find to be material to his or her
7 investment decision.

8 The evidence admitted at trial established that
9 Mr. Shkreli made material misrepresentations and omissions
10 to his investors in multiple performance reports. The PSR's
11 inclusion of misrepresentations and omissions to the
12 nontestifying MSMB Healthcare investors was therefore
13 appropriate.

14 Mr. Shkreli also argues in objection to
15 Paragraph 17 that in describing material misrepresentations
16 to the potential MSMB Healthcare investors the PSR
17 improperly incorporates references and evidence related to
18 an overt act of the conspiracy charged in Count 4 for which
19 he was acquitted. The Court respectfully disagrees. The
20 PSR properly incorporates an admitted trial exhibit as an
21 example of Mr. Shkreli's misrepresentation to potential
22 investors, specifically an e-mail from Mr. Shkreli to Kevin
23 Mulleady in which Mr. Shkreli materially misrepresents the
24 value of MSMB Healthcare's active under management, knowing
25 and intending that Mr. Mulleady would use that inflated and,

1 in fact, false valuation for purposes of soliciting
2 investments in the funds.

3 Mr. Shkreli next objects to Paragraph 18 of the
4 PSR which states that Mr. Shkreli provided fabricated
5 information to NAB Consulting which acted for a period as
6 MSMB Healthcare's fund administrator. Mr. Shkreli objects
7 that the information provided to NAB was not fabricated. As
8 the trial evidence showed, however, Mr. Shkreli's
9 representations to NAB Consulting and others included
10 significant misrepresentations concerning the size and
11 performance of MSMB Healthcare's investment in Retrophin.

12 In my February 26, 2018 memorandum and order at
13 Page 64 and 65 I discuss the series of transactions
14 resulting in the retroactive restructurization of MSMB
15 Healthcare's 900,000-dollar investment in Retrophin.
16 Mr. Shkreli then makes a series of objections to
17 Paragraphs 21 through 35 in the PSR related to conduct
18 charged in Count 7 of which Mr. Shkreli was acquitted.

19 As discussed, the Court found that the Government
20 had proven by at least a preponderance of the evidence the
21 conduct charged in Count 7 and I am permitted to consider
22 this conduct in sentencing, nevertheless, in my discretion I
23 will not consider this conduct except as necessary to the
24 extent of its interrelation with counts of conviction and I
25 therefore need not address each of these objections

1 individually.

2 Mr. Shkreli then objects to statements in
3 Paragraph 36 through 40 of the PSR with a general objection
4 referencing the Rule 29 motion to a judgment of acquittal on
5 Count 8. I addressed in deciding Mr. Shkreli's Rule 21 --
6 Rule 29 argument in the February 26, 2018 order.

7 Mr. Shkreli also objects to Paragraphs 82 and 117.
8 The PSR has been updated to reflect these objections and now
9 I would ask whether any parties have any other objections or
10 corrections or statements.

11 MS. KASULIS: No, Your Honor.

12 MR. BRAFMAN: No, Your Honor, thank you.

13 THE COURT: Mr. Shkreli has calculated his total
14 offense level at 11 and his criminal history category of 1
15 resulting in a guideline range of imprisonment between 8 and
16 14 months. In light of the Court's decision on the loss
17 amount which effects his guideline calculation, Mr. Shkreli
18 had requested a sentence between 12 and 18 months
19 incarceration followed by Court mandated therapy and 2,000
20 hours of community service.

21 As we know, the Government has requested a
22 sentence of 180 months, which is significantly below the
23 guideline range. The probation department has recommended a
24 sentence of 96 months for each of Count 3 and 6 and 60
25 months on Count 8, which all sentences to run concurrently.

1 With regard to finding, I make the following
2 finding: On August 4th, 2018, Mr. Shkreli was found guilty
3 by a jury verdict on Counts 3, 6 and 8 of an eight-count
4 indictment.

5 Count 3 of the indictment charged Mr. Shkreli with
6 securities fraud in relation to an entity known as
7 MSMB Capital in violation of Title 15 United States Code
8 Section 78JB.

9 Count 6 of the indictment charged Mr. Shkreli with
10 securities fraud in relation to an entity known as
11 MSMB Healthcare in violation of Title 15 United States Code
12 Section 78JB.

13 Count 8 of the indictment charged Mr. Shkreli
14 together with Evan Greebel and others with conspiracy to
15 commit securities fraud in relation to an entity known as
16 Retrophin in violation of Title 18 United States Code
17 Section 371.

18 The PSI calculated a base offense level of seven
19 and an add -- and then added a 20-level enhancement for loss
20 greater than 9.5 million and less than \$25 million. In
21 addition, the PSR added the enhancement that I discussed
22 earlier for obstruction of justice which resulted in a total
23 offense level of 41.

24 Upon special consideration of the advisory
25 guideline, I have independently computed Mr. Shkreli's

1 offense level and adjustments as follows: Under guideline
2 Section 3B1.2 I first grouped the three counts of conviction
3 for sentencing purposes because the offense level for each
4 count is determined largely on the basis of the total amount
5 of loss. That is Guideline 3B1.2. This guideline also
6 specifically instructs the defenses under Section 2B1.1R23.
7 Both Counts 3 and 6 carry a statutory maximum sentence of 20
8 years under 15 U.S. Code Section 78SF.

9 Count 8 carries a maximum sentence of five years
10 under 18 U.S. Code Section 371. Under Sentencing
11 Guideline 2B1.1A1 Mr. Shkreli's base offense level is seven.

12 For the reasons I have already discussed in
13 addressing Mr. Shkreli's objections to the PSR, the
14 enhancement I will apply are as follows: Under
15 Guideline 3B1.3B I apply the offense level corresponding to
16 the aggregated quantity of loss, which as I have previously
17 explained is \$10,400,450. Under Guideline 2B1.1B1K, loss
18 amount of between 9.5 million and 10.5 million increase the
19 offense level by 20.

20 Under the sentencing Guideline 2B1.1B2A1 the
21 enhancement for 10 or more victims which result in an
22 increase of two points.

23 Under Guideline 2B1.1B10, the use of sophisticated
24 means results in an enhancement of the two points.

25 Under Guideline 3B1.1(a) because Mr. Shkreli's

1 role as a leader of the conspiracy charged in Count 8 which
2 included more than five members, the offense level is
3 increased by four points.

4 With regard to the investment advisor enhancement,
5 Mr. Shkreli did not object to the PSR's application of
6 investment advisor enhancement. I conclude that the trial
7 evidence clearly showed that at the time of the offense
8 conduct charged in Counts 3 and 6, Mr. Shkreli was an
9 investment advisor. In addition the same enhancement
10 applies to officers and directors of publicly-traded
11 companies in connection with offenses involving the
12 violation of security fraud, thus the same enhancement could
13 also apply to Count 8 because Mr. Shkreli served as the CEO
14 of Retrophin, Inc., beginning in December of 2012 and served
15 in that role at the time of the offense conduct charged in
16 Count 8.

17 Under guideline Section 2B1.1B19A3, the offense
18 level is therefore increased by four points.

19 And as previously noted, I will not apply the
20 obstruction of justice enhancement.

21 Those enhancement and base offense levels result
22 in a total adjusted offense level of 39.

23 The PSR reported that Mr. Shkreli has no prior
24 criminal history and accordingly under the same table of the
25 advisory guideline, I find that Mr. Shkreli has a criminal

1 history category of one.

2 Have I overlooked anything regarding the guideline
3 calculation, Counsel.

4 MS. KASULIS: No, Your Honor.

5 MR. BRAFMAN: No, Your Honor.

6 THE COURT: Now, with regard to the sentencing
7 options, on Counts 3 and 6 the maximum statutory term of
8 imprisonment is 20 years on each count.

9 On Count 8 the maximum term of imprisonment is
10 five years.

11 None of the counts of conviction are required to
12 run consecutively.

13 Under the guideline, the range of sentence for a
14 total offense level of 39 and a criminal history category of
15 one is between 262 and 327 months.

16 For each of Count 3, 6 and 8, the Court may impose
17 a term of supervised release of three years. Under 18 U.S.
18 Code Section 3583B2 multiple terms of supervised release
19 should run concurrently under Section 3624E of Title 18.

20 Under 18 U.S. Code Section 3559, Count 3 and 6 are
21 Class B felony and Count 8 is a Class B felony. Under
22 Sentencing Guideline 5B1.2 the guideline range for
23 supervised release for each count is least one year but not
24 more than three years.

25 Under Title 18 U.S. Code Section 3561, Mr. Shkreli

1 is eligible for probation of at least one but not more than
2 five years on each of Counts 3, 6 and 8. That's
3 Section 3561 of Title 18. The term of probation must run
4 concurrently under Section 3564.

5 Under the guidelines, Mr. Shkreli is ineligible
6 for probation because the applicable sentencing guideline
7 range is in Zone B of the sentencing table,
8 Guideline 5B1.1A.

9 Although, as I have noted, we received today a
10 request for restitution from one of Mr. Shkreli's victims,
11 we will set that issue aside pending further submissions
12 from the parties.

13 On Counts 3 and 6 with regard to a fine, the
14 maximum fine is \$5 million under 18 U.S. Code Section 78FS.
15 On Count 8 the maximum statutory fine is \$250,000 under 18
16 U.S. Code Section 3571B. Under Guideline 5E1.2C3 and 4 and
17 5E1.2 H, the applicable range of fine for Mr. Shkreli is
18 between \$25,000 to \$10 million. I would note that
19 Mr. Shkreli argues that he does not have assets to pay a
20 fine, however I believe that the record reflects otherwise.

21 In addition, Title 18 U.S. Code Section 3013
22 requires that I impose a \$100 mandatory special assessment
23 on each count of conviction and therefore he will have to
24 pay a 300-dollar mandatory assessment.

25 In addition to the above penalties on March 5,

1 2018, I so ordered the Government to preliminary order of
2 forfeiture which will be incorporated into the judgment.
3 The order authorized the forfeiture of substitute assets up
4 to the amount of \$7,360,450. Specifically a \$5 million
5 brokerage account currently held at E-Trade ending in digits
6 0258. That account was used to secure Mr. Shkreli's bail
7 and was held for purposes of the sentencing after he was
8 remanded.

9 Mr. Shkreli's interest in Vyera Pharmaceuticals,
10 formerly known as Turing Pharmaceuticals; the album, "Once
11 Upon a Time in Shaolin" by the Wu Tang Clan; the album, "Tha
12 Carter 5" by Lil' Wayne, a Picasso painting.

13 At this time I advise Mr. Shkreli that you do have
14 the right to appeal your sentence. Any appeal must be filed
15 within 14 days of judgment being entered in this case. If
16 you cannot afford to pay the cost of filing an appeal, you
17 may apply for leave to do so without paying the filing fee
18 if you can establish that you are indigent. If you request
19 the clerk of this court to do so, we will prepare and file
20 under a notice of appeal on your behalf, and I understand
21 that defense counsel will take all necessary steps to
22 protect Mr. Shkreli's right to appeal and to have counsel on
23 appeal.

24 MR. BRAFMAN: That's correct, Your Honor.

25 THE COURT: Thank you.

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1 Has the Government arranged for return of any of
2 Mr. Shkreli's property that may have been retained at the
3 time of his arrest to avoid any unnecessary proceedings.

4 MS. KASULIS: Your Honor, I don't believe we have
5 any of those items, but for the sake that we do, we
6 certainly will return them.

7 THE COURT: Does Mr. Shkreli, Mr. Brafman, care to
8 identify any items that the FBI or the Government may be
9 holding?

10 MR. BRAFMAN: Just the passport, Your Honor.

11 THE COURT: All right.

12 MR. BRAFMAN: Just the passport.

13 THE COURT: The passport is being held by the
14 Court by pretrial, I believe, at the time and it will be
15 held until he finishes his entire sentence including
16 supervised release.

17 Are there any other matters that either
18 Mr. Shkreli or the Government wish to bring to my attention?

19 MS. KASULIS: No, Your Honor.

20 MR. BRAFMAN: No, Your Honor.

21 THE COURT: All right. As we know the guidelines
22 are no longer mandatory and I have the authority to depart
23 from the guideline. As I noted before, I find that
24 Mr. Shkreli's total adjusted offense level under the
25 guideline is 39, his criminal history category is one and

1 his guideline range of imprisonment would be between 252 and
2 327 months.

3 Under Title 18 U.S. Code Section 3661, there is,
4 quote, no limitation on the information concerning the
5 background, character and conduct that I may receive and
6 consider for purposes of imposing the appropriate sentence.
7 Nevertheless, because I know that this case has attracted
8 significant attention from the press and from the public, I
9 want to reiterate something that I had stated from the
10 beginning of Mr. Shkreli's trial. This case is not about
11 Mr. Shkreli's self-complicated public persona nor his
12 controversial statements about politics or culture, nor is
13 this case about Mr. Shkreli's actions or statements
14 regarding pharmaceutical pricing. As we note, the pricing
15 of pharmaceuticals and any limitations upon it is not before
16 me, that is the job of the United States Congress. For that
17 reason, I will base my sentence on the conduct which
18 Mr. Shkreli has been found guilty; namely, two counts of
19 securities fraud and one count of conspiracy to commit
20 securities fraud.

21 In determining Mr. Shkreli's sentence I have
22 reviewed all of the facts contained in the PSR and its
23 addenda. And I have given special consideration to the
24 advisory guideline and the factors set forth in Title 18
25 U.S. Code Section 3553(a). I've also taken great care in

1 reviewing all of the submissions by the parties and the
2 attachments of friends, family, supporters and detractors.
3 I've also reviewed the numerous sentencing letters that were
4 sent unsolicited to the Court. I've considered the nature
5 and circumstances of Mr. Shkreli's offense and I find them
6 to be extremely serious. Mr. Shkreli was convicted of two
7 counts of securities fraud and one count of conspiracy to
8 commit securities fraud.

9 Starting in 2009, Mr. Shkreli defrauded investors
10 in an MSMB Capital hedge fund. He's written to individuals
11 with whom he had cultivated a relationship and set down to
12 meals with these individuals, he had met them face-to-face,
13 yet he made multiple misrepresentations and omissions of
14 material fact. Mr. Shkreli lied about the size of the fund,
15 the nature of the funds, investing approach and strategy,
16 his personal investing experience and his educational
17 background, and the extent of the third-party oversight by
18 auditors and lawyers over the fund's operation. Mr. Shkreli
19 induced investments and induced investors to keep their
20 money in the MSMB Capital fund by circulates periodic
21 performance reports to investors that materially misstated
22 the value of their investments and the fund's performance.

23 After Mr. Shkreli lost all of the MSMB Capital
24 fund's money in a failed investment in February 2011 he
25 chose to begin a new fund, MSMB Healthcare. Just as with

1 MSMB Capital he solicited investments based on lies about
2 the size and nature of the fund and his experience. He also
3 mislead MSMB Healthcare investors about the performance of
4 their investment.

5 In February 2011 Mr. Shkreli, again, working to
6 create Retrophin, a pharmaceutical company, unbeknownst to
7 MSMB Healthcare investors, Mr. Shkreli use significant
8 amounts of the money invested in MSMB Healthcare to fund
9 Retrophin. And this is important because the fund was
10 described as a diversified fund, a fund that would be liquid
11 and that would take long and short positions. Mr. Shkreli
12 redirected over a \$1 million from MSMB Healthcare into
13 Retrophin and then used those funds to pay off unrelated
14 professional and personal obligations.

15 In September 2012 Mr. Shkreli told his MSMB
16 investors that it was winding down both hedge funds to focus
17 on Retrophin. He falsely represented to those investors
18 that they could redeem their investments in cash by a date
19 certain, specifically stating in the wind-down letter that
20 investors could be cashed out by October 31st of 2012. When
21 investors in the MSMB Healthcare and Capital funds became
22 suspicious about Mr. Shkreli's failure to redeem their
23 funds, Mr. Shkreli strung them along by ultimately ignoring
24 them, pretending to work on paying them back or delaying
25 their redemptions for months or years.

1 In the fall and early winter of 2012 Mr. Shkreli
2 worked with Mr. Greebel and others to take Retrophin public
3 through what is known as a reverse merger transaction with a
4 shell company Desert Gateway. Although there's nothing
5 illegal about a reverse merger itself, Mr. Shkreli explained
6 his choice with Desert Gateway to his coconspirator Evan
7 Greebel for although Desert Gateway was more expensive than
8 the other reverse merger option, Mr. Shkreli and Mr. Greebel
9 conspired to ensure that 2 million of the \$2.5 million free
10 trading shares would be purchased for nominal amounts by
11 select group of Mr. Shkreli's employees and friends.

12 (Continued on next page.)
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1 THE COURT: (Continued) Mr. Shkreli and
2 Mr. Greebel then agreed to use the Fearnow shares for
3 Mr. Shkreli's purposes, even though the shares were nominally
4 owned by others. First, Mr. Shkreli and Mr. Greebel tried to
5 control the sales of the Fearnow shares with the intent of
6 preventing the share price of Retrophin from falling. When
7 one Fearnow shareholder, Timothy Pierotti, began to sell his
8 shares against Mr. Shkreli's instructions, Mr. Shkreli tried
9 to stop him and made serious threats directed at Mr. Pierotti
10 and his family. Mr. Shkreli wrote a letter that threatened
11 action directly to Mr. Pierotti's wife, which disparaged
12 Mr. Pierotti and threatened to make the Pierotti family,
13 including their four young children, homeless.

14 He also froze Mr. Pierotti's brokerage account, and
15 according to the Government hacked into the family's social
16 media accounts, including those of Mr. Pierotti's minor
17 children. He later boasted in an interview about what he had
18 done, stating: "I threatened that dude and his fucking kids"
19 and repeated, "I threatened that fucking guy and his fucking
20 kids because he fucking took \$3 million from me and he ended
21 up paying me back.... I had two guys parked outside his house
22 for six months watching his every fucking move. I can get
23 them."

24 Second, Mr. Shkreli and Mr. Greebel used the Fearnow
25 shares for Mr. Shkreli's benefit. Mr. Shkreli and Mr. Greebel

1 caused some of the Fearnow shares to be transferred to
2 individuals to whom Mr. Shkreli owed money because of
3 misrepresentations he had made in connection with their
4 investments in the MSMB entities or Retrophin.

5 Eventually, once Retrophin secured additional
6 investments through PIPEs in January and February of 2013,
7 Mr. Shkreli used Retrophin's money to pay off his MSMB
8 investors through what the Government alleged was fraudulent
9 settlement and consulting agreements, charged in Count Seven.
10 As I have explained, although I will not take the fraudulent
11 conduct charge in Count Seven into account in my sentencing
12 determination, I will also not give Mr. Shkreli any credit for
13 funneling Retrophin's money and shares to his defrauded
14 investors.

15 Second, I have considered Mr. Shkreli's personal
16 history characteristics and circumstances.

17 He was born March 17, 1983, in Brooklyn. His
18 parents, Pashko and Katrina, who immigrated from Albania are
19 ages 60 and 55 and are in good health. Pashko Shkreli is a
20 retired manager at a private sanitation company, and Katrina
21 Shkreli is employed at a private sanitation company. The
22 family lived in the lower-middle income circumstances in
23 Brooklyn.

24 Mr. Shkreli has two sisters and a brother. His
25 sister, Leonora Izerne, is 36 years old and married and

1 resides in Queens, New York. She's in good health and
2 Mr. Shkreli maintains a close relationship with her. Mark
3 Shkreli, Mr. Shkreli's younger brother, also lives in
4 Brooklyn. He is supported financially by Mr. Shkreli and is
5 very close to his brother. He has written a very moving
6 letter about needing and assistance that Mr. Shkreli gives
7 him.

8 Mr. Shkreli's youngest sister, Anna Shkreli, is 19
9 and attends college in Brooklyn. He has a good relationship
10 with her.

11 Mr. Shkreli has described his childhood as lonely
12 and difficult, and his family dynamic is tumultuous.
13 Mr. Shkreli reports having a poor relationship with his
14 parents because of abuse that he suffered. He reports that
15 his parents were physically and verbally abusive to him and
16 Leonora, and that his father was physically abusive to his
17 mother on a regular basis. His parents also did not permit
18 Mr. Shkreli and his sisters to interact with their peers.
19 Mr. Shkreli rebelled against his parents sometimes physically.
20 Mr. Shkreli now has limited contact with his parents and
21 reports seeing them once or twice a year. Mr. Shkreli's
22 sister, Leonora Izerne, corroborates Mr. Shkreli's description
23 of their childhood experience stating that Mr. Shkreli's
24 father was physically and emotionally abusive towards the
25 siblings and the mother. She writes, "It is only now as an

1 adult that I can comprehend how terrible it all was."
2 Ms. Izerne recalled that Mr. Shkreli has tutored her in math,
3 bought her first cell phone and employed her at his companies,
4 and she describes Mr. Shkreli as a wonderful brother.

5 At a young age, Mr. Shkreli reports that his
6 teachers deemed him a prodigy. He stated that his parents
7 understood his abilities but sometimes shut down opportunities
8 presented to him. Mr. Shkreli was accepted into the elite
9 Hunter College High School from September 1995 through
10 February 2000, but he left in tenth grade because he was not
11 taking school seriously. He was also informed that he would
12 not be passed forward to eleventh grade and would have to
13 repeat tenth grade. He stated that he had terrible grades and
14 dropped out as a form of rebelling against his parents.
15 Mr. Shkreli's high school friend, Frankie Guttman, who later
16 worked with Mr. Shkreli at Elea Capital Management writes that
17 Mr. Shkreli received little to no support from his parents and
18 would show up to school without any money for lunch needing to
19 borrow money so he could eat. Mr. Guttman and another high
20 school friend, David Zheng, recalled that Mr. Shkreli took
21 care of his siblings. Mr. Zheng wrote that Mr. Shkreli made
22 diligent efforts to support and nurture his sisters and
23 brother both financially and emotionally.

24 After leaving Hunter College High School,
25 Mr. Shkreli attended and graduated from City-as-a-School, an

1 alternative high school. He attended Baruch College from 2001
2 to 2004, graduating with a Bachelor's of Business
3 Administration in 2004. In approximately 2003, Mr. Shkreli
4 left his parents' home to live in Manhattan, and prior to
5 doing that, he lived alone in an apartment in Manhattan in an
6 upper-income neighborhood.

7 From April 2000 to April 2004, Mr. Shkreli worked as
8 an intern, then an associate at the hedge fund Cramer
9 Berkowitz, earning \$50,000 annually.

10 From April 2004 to December 2004, Mr. Shkreli worked
11 at UBS Wealth Management as an associate earning \$50,000 a
12 year. He left UBS to work as a hedge fund analyst at Intrepid
13 Capital Funds earning \$75,000. Mr. Shkreli left Intrepid
14 Capital in January 2006 to start Elea Capital, a hedge fund.
15 His high school friend, Mr. Guttman, recalls that Mr. Shkreli
16 realized that by teaching himself the complex science, he
17 could have a leg up on the competition. Mr. Shkreli worked
18 nonstop and expected the same of his employees. After Elea
19 Capital failed in July of 2007, Mr. Shkreli moved in with his
20 sister, Leonora, in Queens for a year and received some
21 financial assistance from her. For several months in 2008,
22 Mr. Shkreli worked as a portfolio manager at Royal Bank of
23 Canada, but he was terminated in September 2008 for trading in
24 a manner that violated company policy. As I have discussed,
25 he started MSMB Capital in September 2009 and MSMB Healthcare

1 in February 2011. The PSR states that Mr. Shkreli started
2 Retrophin in late 2010, although trial evidence suggested that
3 the company started operations in the spring of 2011.
4 Retrophin became a public company in December 2012 and was
5 incorporated in New York on November 12th, 2013. Mr. Shkreli
6 left Retrophin in the fall of 2015.

7 Mr. Shkreli began Turing Pharmaceuticals, now Vyera
8 Pharmaceuticals, in early 2015. He reported investing \$20
9 million in the company and was the CEO until he voluntarily
10 stepped down after his arrest on December 18th, 2015.
11 According to the current CEO, "Vyera is committed to
12 developing and commercializing treatments that address serious
13 and neglected diseases with high unmet needs." Mr. Shkreli
14 held a 50 percent ownership interest in Vyera but did not take
15 a salary. In November 2015, Mr. Shkreli became the CEO of
16 KaloBios Pharmaceuticals, a publicly-traded company. He was
17 not compensated and invested between \$2 million and \$3 million
18 in the company. He stepped down as CEO on December 17th,
19 2015, following his arrest. In August 2016, Mr. Shkreli
20 started Godel Systems, Inc., a software company. He invested
21 \$500,000 in the company and did not receive a salary. He left
22 Godel on September 18th, 2017, but a current employee has
23 stated that the company would consider reinstating Mr. Shkreli
24 upon his release. In addition to this employment history, I
25 note that Mr. Shkreli has had personal success investing in

1 the stock market, reporting \$20 million in net gains in 2015.
2 Along with three other individuals, Mr. Shkreli, is listed as
3 the owner of three US patents for treatment of neurological
4 disorders.

5 Mr. Shkreli has been incarcerated since
6 September 13th, 2017. The PSR reports that he has had no
7 disciplinary incidents at MDC and Mr. Shkreli has become
8 involved in teaching and mentoring inmates.

9 The PSR also describes Mr. Shkreli's financial
10 status based on his tax returns from 2011 through 2015 and a
11 personal financial statement dated November 15th, 2017. The
12 PSR notes that Mr. Shkreli did not file tax returns in New
13 York State between 2007 and 2010. Based on these sources, the
14 PSR, as amended on February 1st, 2018, states that Mr. Shkreli
15 has assets of \$38,910,624 and liabilities of \$11,725,646
16 resulting in a net worth of \$27,184,978. I know that this net
17 worth calculation does not incorporate the amount that I have
18 ordered Mr. Shkreli to forfeit for his criminal conduct,
19 specifically \$7,360,450. Mr. Shkreli is currently engaged in
20 several ongoing stayed cases, including a case brought by the
21 SEC.

22 Mr. Shkreli does not have a current source of
23 income, but reports that there is, quote, "good possibility of
24 significant future income in the form of dividends that is
25 unpredictable in nature." He reports monthly expenses of

1 \$6,400 while incarcerated. The PSR concludes that Mr. Shkreli
2 has the ability to pay a fine, and I agree with that
3 conclusion.

4 On March 7, 2018, after I granted the Government's
5 preliminary motion for forfeiture, Mr. Shkreli's counsel filed
6 a letter stating that Mr. Shkreli was unable to pay a fine.
7 However, based on my review of his assets and liabilities and
8 statements by Mr. Shkreli, I conclude that he can afford to
9 pay a fine.

10 With regard to Mr. Shkreli's mental and physical
11 condition, Mr. Shkreli does not have a history of serious
12 medical problems. He takes Claritin for allergies and
13 demonstrates a history of panic attacks, which at one point
14 became so frequent that they negatively impacted his work. He
15 takes medication for treatment of panic disorder and anxiety
16 disorder characterized by recurrent and unexpected panic
17 attacks. He also has been prescribed other psychotropic
18 medications in the past.

19 Dr. David Salsberg, who examined Mr. Shkreli at
20 defense counsel's request, diagnosed Mr. Shkreli with
21 generalized anxiety disorder, major depressive disorder, and
22 an unspecified personality disorder. Dr. Salsberg also noted,
23 however, that Mr. Shkreli has cognitive performance in a very
24 superior range and is extremely bright with intellectual
25 capacities at the highest levels, and that was brought out by

1 numerous tests that he conducted.

2 Mr. Shkreli has reported that he has made risky bets
3 with personal funds, including what the PSR refers to as
4 unreasonable risks, which have led to financial difficulties
5 including paying his rent. Some of his investments have been
6 very successful and he has reported enjoying the thrill and
7 excitement of taking these risks.

8 In the past, Mr. Shkreli has used alcohol as an
9 outlet for stress, consuming up to seven or eight drinks on a
10 daily basis after his indictment in December 2015.

11 Mr. Shkreli has referred to his alcohol consumption as toxic
12 behavior. Aside from a six-month period in 2008, Mr. Shkreli
13 does not report any history of illicit drug use. Mr. Shkreli
14 is receptive to participating in mental health treatment, and
15 his sister also suggests that he may benefit from mental
16 health counseling.

17 I have considered the numerous letters written on
18 Mr. Shkreli's behalf, and, again, I am very grateful for time
19 that these individuals took to write to the Court or to
20 Mr. Brafman so that he could include those letters in his
21 submissions; that so many of Mr. Shkreli's family, friends,
22 and online acquaintances spent time and effort in writing
23 these letters speaks well of Mr. Shkreli.

24 Notwithstanding the difficult family dynamic,
25 Mr. Shkreli's father, Pashko, attended in the most devoted way

1 the trial nearly every day and he wrote a letter recounting
2 the pride of Mr. Shkreli's achievements as a child. He
3 describes Mr. Shkreli's gift for math and science and early
4 passion for finance. He recalls that Mr. Shkreli helped his
5 siblings with their homework. He states that Mr. Shkreli is
6 his parents' pride and joy and their life.

7 In addition to describing Mr. Shkreli's difficult
8 childhood, Mr. Shkreli's sister, Leonora Izerne, describes
9 Mr. Shkreli's astounding comprehension and hunger to learn
10 calling her brother a walking encyclopedia who has impressed
11 doctors, scientists, senior executives, and experts despite
12 being self-taught. Ms. Izerne describes something that we
13 have heard about at trial, that Mr. Shkreli's extraordinary
14 work ethic and passion for his work has garnered him a
15 successful reputation. Mr. Shkreli's younger brother, Mark,
16 also describes Mr. Shkreli as an incredibly intelligent hard
17 worker who is also very giving and kind.

18 Many of these letters focus on the contrasts between
19 Mr. Shkreli's self-created public persona and his behavior
20 with individual friends, colleagues, and family. These
21 letters are particularly valuable because they reveal a kind
22 and generous aspect of Mr. Shkreli's character, which is
23 likely unknown to the public, and Mr. Brafman has certainly
24 touched upon some of those letters.

25 On the other hand, I have received some letters from

1 individuals and organizations that describe the negative
2 impact of Mr. Shkreli's actions regarding pharmaceutical drug
3 pricing. Most notably, I received a set of letters from
4 housing works and other charitable organizations that work
5 with individuals with HIV/AIDS in which they advocate for the
6 Government's proposed order of forfeiture in this case.

7 One letter, from Dr. Philip Bolduc of the University
8 of Massachusetts Medical School, states that due to
9 Mr. Shkreli's decision to sell the drug Daraprim for an
10 exorbitant price, the drug is not covered by some insurance
11 plans. Mr. Bolduc writes that they lost a patient to septic
12 shock because of the unavailability of Daraprim due to what
13 Dr. Bolduc characterized as Mr. Shkreli's greed and mendacity.
14 Again, the drug pricing issue is not before for this Court,
15 notwithstanding the tragic consequences of pharmaceutical
16 price increases. Again, that is Congress's job to do
17 something about this issue.

18 In contrast, Mr. Shkreli's friends and acquaintances
19 state, almost uniformly, that he is personally generous, kind,
20 and misunderstood, even though most recognize that some of the
21 misunderstandings stem from Mr. Shkreli's own actions. Some
22 write about Mr. Shkreli's willingness to personally help
23 individuals in need from strangers with rare medical diseases
24 to his own employees. One individual, who has a terminal
25 disease, wrote that she met Mr. Shkreli through an online

1 forum and that Mr. Shkreli was an invaluable resource for
2 individuals with rare diseases who often feel they are not
3 seen or heard by those in the pharmaceutical industry.
4 Similarly, when Mr. Shkreli was CEO for Retrophin, he took the
5 time to meet directly with a family whose children had been
6 diagnosed with a rare degenerative disease known as PKAN.
7 Mr. Shkreli and Retrophin offered their expertise and help,
8 including an offer of significant financial and medical aid.
9 The children's mother wrote that the Martin I know would go to
10 great lengths to make a difference in a person's life. When
11 another individual, Robin Anderson, reached out to Mr. Shkreli
12 to seek his help and advice about a specific drug, Mr. Shkreli
13 took the time to research the drug and provide his insights on
14 how the family might be able to request approval for treatment
15 even though his own trial in this case was about to begin.

16 Mr. Shkreli's college friend, Jordan Walker, notes
17 that Mr. Shkreli once offered to pay for medical care for
18 Mr. Walker's girlfriend when she did not have insurance. In
19 addition, as we know, an inmate at MDC told Mr. Shkreli that
20 his girlfriend had given birth to premature twins and
21 Mr. Shkreli arranged for the delivery of diapers, wipes, and
22 other items to the inmate's girlfriend, something the inmate
23 described as the most caring gesture anyone has ever done in
24 these stressful times. Several of Mr. Shkreli's friends have
25 written about how Mr. Shkreli has supported them emotionally.

1 An individual writes that Mr. Shkreli offered her the truest
2 form of friendship she has ever known in a very difficult time
3 in her life.

4 Mr. Shkreli's supporters also described his
5 willingness to hire, work with, and mentor others from very
6 diverse backgrounds. Tashdid Hasan met Mr. Shkreli while
7 driving a yellow cab to pay for his college education.
8 Mr. Shkreli encouraged Mr. Hasan to complete his degree and
9 educate himself on investing. When Mr. Hasan met Mr. Shkreli
10 two years later, Mr. Shkreli hired Mr. Hasan as an intern at
11 Retrophin and later as an analyst at Turing. Catherine Chen,
12 who worked at Retrophin, writes that Mr. Shkreli treated
13 everyone equally at the workplace like family and that she
14 witnessed many counts of kindness, consideration, and
15 thoughtful acts. Similarly, Dr. Megan Roberts, a former
16 Retrophin and Turing employee writes that Mr. Shkreli was a
17 great boss who cared deeply for his employees. Maureen Lohry,
18 Mr. Shkreli's employee and friend, described him as an
19 exceptional boss and a dedicated mentor who has continued to
20 mentor her through his incarceration despite his limited
21 access to means of communication.

22 Another letter mentioned earlier was from
23 Dr. Horacio Plotkin, and it stands out because at the trial,
24 we heard testimony from witnesses about Mr. Shkreli's
25 aggressive and belittling actions toward Dr. Plotkin who at

1 the time was Chief Medical Officer of Retrophin. Dr. Plotkin
2 writes that Mr. Shkreli was a passionate individual whose
3 generosity is not known by many people but who possessed
4 remarkable scientific insight, such that he was able to think
5 out of the box and repurpose a drug that was developed for
6 hypertension for the treatment of a rare kidney disease.

7 Mr. Shkreli's employees describe him as inspiring
8 and gifted. Many of the letters, whether from family, friends
9 or even Internet acquaintances, describe Mr. Shkreli's
10 intelligence and passion for science, particularly in the
11 field of rare diseases, and ask that I consider Mr. Shkreli's
12 potential to contribute to society in my sentencing. It is
13 more than clear that Mr. Shkreli is a tremendously gifted and
14 intelligent individual who has a capacity for kindness.

15 Mr. Shkreli also has a career passion for teaching
16 and education. I have received a number of letters from
17 individuals who have interacted with Mr. Shkreli on the
18 Internet who have simply watched his online video tutorials on
19 finance for chemistry. Some of these individuals have also
20 met Mr. Shkreli in person. They described their sincere
21 appreciation for Mr. Shkreli's efforts to share his knowledge
22 about finance and other topics and describe him as a gifted
23 teacher. One individual notes that she was inspired to pursue
24 her goal of becoming a physician's assistant because of
25 Mr. Shkreli. More recently, Mr. Shkreli has taught his fellow

1 inmates at MDC, one of whom writes that Mr. Shkreli is an
2 inspiring and patient teacher and has been the most positive
3 and influential part of his experience.

4 I have also considered Mr. Shkreli's charitable
5 donations. Mr. Shkreli, both individually and through the
6 Shkreli Fund, has made significant donations to a variety of
7 causes. He donated \$1 million to Hunter College High School,
8 the largest gift in school history, and made contributions of
9 tens of thousand of dollars to charities and organizations
10 such as Charley's Fund, Matt's Promise, the University of
11 British Columbia, The New York Center for Children, and the
12 Lesbian, Gay, Bisexual & Transgender Community Center.
13 Notably, these donations occurred prior to Mr. Shkreli's
14 arrest for the instant offense. Ms. Izerne, Mr. Shkreli's
15 sister, was personally involved in Mr. Shkreli's charitable
16 efforts, writing that Mr. Shkreli was genuinely eager to help
17 individuals and organizations, both through the Shkreli
18 Foundation and Mr. Shkreli's own private and personal efforts.
19 Mr. Shkreli's charitable contributions, efforts to help sick
20 individuals, and giving up his personal time are laudable.

21 The Government notes that Mr. Shkreli made some of
22 these contributions after defrauding his investors and that
23 these contributions are not distinctively different from other
24 white collar defendants. Even though Mr. Shkreli's acts of
25 kindness and generosity may not entail an extraordinary

1 personal sacrifice as discussed by courts in the Circuit,
2 these acts provide the basis for a variance.

3 As I have already stated, this case is not about
4 pharmaceutical pricing or Mr. Shkreli's controversial
5 statements or actions, nor is it about Mr. Shkreli's
6 scientific aptitude. But sentencing letters from both those
7 who ask for leniency and those who ask for a long sentence
8 have helped me understand Mr. Shkreli more fully. I am
9 grateful for those who took time to write and to enlighten me
10 on Mr. Shkreli's whole person. I have a better sense of who
11 he is.

12 Although he has been convicted of fraud, serious
13 crimes, and he opted for pecuniary gain, he's also a
14 personally generous, giving, and kind individual. I am
15 persuaded that the downward departure or variance from the
16 sentencing guidelines is appropriate in this case.

17 In essence, however, this case is about his
18 egregious multitude of lies, his repeated breaches of trust in
19 people that he knew and looked at face-to-face, and his
20 conspiracy to manipulate the price and trading of a
21 publicly-traded security. I therefore consider the need for
22 the sentence imposed to reflect the seriousness of the offense
23 to promote respect for the law and provide just punishment for
24 the offense to afford adequate deterrence and to protect the
25 public from further crimes by Mr. Shkreli.

1 In imposing a sentence that reflects the seriousness
2 of the offense, I am mindful that more than half of the total
3 offense level in this case is driven by the loss amount
4 calculation. As then-District Judge Lynch, now Circuit Judge
5 Lynch wrote, "Loss is certainly a relevant sentencing factor:
6 All else being equal, large thefts damage society more than
7 small ones.... But the guideline provisions for ... fraud
8 place excessive weight on this single factor." That was in
9 *United States v. Emmenegger*, 329 F. Supp 2d 416 at page 427,
10 and this was a 2004 decision.

11 Also, in the *United States v. Adelson*, 441 F. Supp
12 2d at 506, Judge Rakoff, in 2006, described the inordinate
13 emphasis that the guidelines place on the amount of loss in
14 fraud cases. In part for this reason, the sentence I impose
15 will be significantly below the sentencing guideline range of
16 262 to 327 months. I also note that both the Probation
17 Department and the Government have requested sentences below
18 the guideline range.

19 Mr. Shkreli's repeated lies to his investors and his
20 manipulation of Retrophin stock are precisely the types of
21 conduct that Congress sought to prohibit in enacting our
22 securities laws. In imposing a sentence, I have therefore
23 considered the need to make clear, not just to Mr. Shkreli,
24 but also to other participants in our securities markets, that
25 fraud and manipulation are serious offenses that will incur

1 correspondingly serious penalties.

2 My highly regarded colleague, Judge Jack B.
3 Weinstein, has observed that both individuals who engage in
4 financial fraud choose to engage in white collar crime because
5 they believe that the potential for significant financial
6 benefits outweighs the risk that they will be punished. That
7 was in *United States v. Marsh*, 10-CR-0480, in a decision that
8 he wrote on October 26, 2011.

9 White collar offenders like Mr. Shkreli use their
10 intelligence and acumen to avoid detection of their crimes.
11 For example, Mr. Shkreli used his knowledge of the hedge fund
12 industry to create fraudulent performance reports which
13 deceived even the most sophisticated of investors into
14 believing that their investments were not only safe but were
15 performing at extraordinary levels. Thrilled with
16 Mr. Shkreli's performance, these investors saw no reason to be
17 concerned about fraud and alert the authorities; indeed some
18 helped Mr. Shkreli convince others to invest in his MSMB
19 Healthcare Fund or the MSMB Capital Fund.

20 In sentencing Mr. Shkreli, I am mindful of the
21 Supreme Court's recognition that, quote, "deterrent effect
22 depends not only upon the amount of the penalty but upon its
23 certainty and that crimes that are less grave but
24 significantly more difficult to detect may warrant
25 substantially higher penalties." That was their decision in

1 *Harmelin v. Michigan*, 501 U.S. 957 at page 989 decided by the
2 Supreme Court in 1991.

3 I must also consider the need to deter Mr. Shkreli
4 specifically and to promote his respect for the law. One
5 current Vyera employee writes that Mr. Shkreli has evolved
6 after his arrest and that Vyera operates with constant
7 vigilance for conflicts of interest and an attitude of extreme
8 conservatism toward all investors. Mr. Shkreli has also
9 stated in his letter to me that he acknowledges and respects
10 the jury's verdict and that investors deserve truth and
11 transparency. I also accept and believe that he is generally
12 remorseful for the betrayal of trust that his acts
13 demonstrated toward his investors. He wrote that it breaks
14 his heart that good and honest people were dragged into this
15 mess because of him. He also states that six months in a
16 maximum security prison has been a frightening wake-up call
17 and he knows he needs to change.

18 I must, however, view Mr. Shkreli's statements in
19 light of his other conduct and statements, some of which were
20 made since his conviction by the jury. Mr. Shkreli has
21 clearly and repeatedly minimized his actions and the
22 significance of the jury's verdict. In his letter to me, he
23 admits not to his multitude of lies, but only that he dodged
24 answering questions, he exaggerated if he felt that he had any
25 basis to make the claim, and he provided answers that were

1 only correct if put in a certain assumed context. He
2 acknowledges that, quote, "These choices are now seen as
3 attempts to deceive and manipulate," end of quote.

4 To be clear, Mr. Shkreli's statements were not just
5 seen as attempts to deceive and manipulate. They were actual
6 and intentional deceptions and manipulations of his individual
7 investors and public investors. Mr. Shkreli told investors
8 that his hedge funds had tens of millions of dollars in assets
9 under management and were extraordinarily successful. These
10 were lies. None of what Mr. Shkreli characterizes as assumed
11 context, basis for exaggeration, or alternative
12 interpretations of facts would make them true.

13 Mr. Shkreli has also stated his expectation that,
14 quote, he will be released with time served or in the worst
15 case scenario get three to six more months of imprisonment.
16 In e-mails cited by the Government, Mr. Shkreli, in
17 January 2018, wrote "fuck the Feds" and claimed that the
18 Government would not be able to take all of his money.
19 Mr. Shkreli has also recently written, prior to my decision on
20 his Rule 29 motion, loss amounts, and forfeiture that the
21 prosecution, quote, "won three out of eight counts" and,
22 quote, "proved a fraud where no losses occurred ... it's a
23 reckless embarrassment, especially when Count Eight gets
24 dropped for Rule 29 ... and we appeal for the next ten years
25 on the remaining two counts."

1 In another e-mail, Mr. Shkreli wrote that, quote, he
2 had a lot of remorse but then stated that, quote, he will do
3 everything and anything to get the lowest sentence possible
4 except to give up his constitutional rights.

5 And I recognize that certainly Mr. Shkreli has every
6 right to persist in his claim that he is innocent of the
7 charges and to appeal his conviction, but these e-mails call
8 into question the sincerity of his remorse in his letter to
9 the Court, particularly in light of Dr. Salsberg's report,
10 which states, among other things, that Mr. Shkreli, quote,
11 "employs maladaptive defenses such as denial and
12 rationalization" and that he, quote, "possesses a sense of
13 entitlement and a tendency to externalize responsibility."
14 Dr. Salsberg further notes that Mr. Shkreli may have illusions
15 of invincibility, preoccupation with thoughts of success, and
16 an undisciplined imagination that takes liberties with reality
17 at times, and that Mr. Shkreli constructs intricate
18 rationalizations. Dr. Salsberg also notes the difficult
19 family circumstances and the toll that that took on
20 Mr. Shkreli. He notes his exceptional intelligence and what
21 Dr. Salsberg believes is sincere remorse.

22 Based on Mr. Shkreli's actions and statements, the
23 Court cannot be confident that a minimal sentence of 12 to
24 18 months requested by the defense will deter Mr. Shkreli from
25 future crimes or protect the public. The sentence I impose

1 must therefore reflect the need to promote respect for the law
2 and to deter Mr. Shkreli, specifically, from illegal conduct.
3 To avoid unwarranted sentencing disparities and unfair
4 sentences, I have also researched and reviewed sentences in
5 similar cases, both those before me personally and those in
6 this circuit.

7 After giving respectful consideration to the
8 advisory Sentencing Guidelines and related policy statements,
9 the request of the parties, and all of the factors set forth
10 in Title 18 U.S. Code Section 3553(a)(1)-(7) and for the
11 reasons stated, I will impose a sentence that falls below the
12 Advisory Guidelines range of 262 to 327 months and is
13 sufficient but not greater than necessary for punishment and
14 deterrence.

15 I'm authorized to find, and do find all of the facts
16 appropriate for a determination of Mr. Shkreli's sentence as
17 follows: I sentence Mr. Shkreli to a term of 84 months, with
18 credit for time served on each of Counts Three and Six, to run
19 concurrently. I also sentence him to 60 months with credit
20 for time served on Count Eight to run concurrently with all
21 other counts.

22 Mr. Shkreli has been incarcerated since
23 September 13, 2017. I sentence Mr. Shkreli to a term of three
24 years supervised release on each count, which will all run
25 concurrently.

1 I impose the following special conditions: He must
2 partake in mental health treatment. He must participate under
3 the supervision of the Probation Department and truthfully
4 disclose his financial conditions so the Probation Department
5 can seek reasonable costs and contributions for his treatment.
6 He must also cooperate with probation in securing any
7 third-party insurance, sources of insurance. Mr. Shkreli must
8 also comply with the fine and forfeiture orders in this case.
9 He must engage in community service at 20 hours per month
10 under probation's supervision. Mr. Shkreli shall refrain from
11 engaging in self-employment, which involves access to clients'
12 assets, investments, or money for solicitation of assets,
13 investments, or money; and he is to assist probation in
14 verifying any employment that he secures while under
15 supervision.

16 For the purposes of this order, self-employment
17 includes companies or entities in which Mr. Shkreli is a
18 controlling majority shareholder or an officer or director or
19 otherwise in a position to exercise, control, or direct the
20 operations of the company or entity. Mr. Shkreli shall
21 provide the Probation Department and the United States
22 Attorney's Office with complete and truthful disclosure of his
23 financial records, including co-mingled income, expenses,
24 assets and liabilities to include yearly income tax returns.
25 With the exception of the financial accounts reported and

1 noted within the presentence report, the defendant is
2 prohibited from maintaining and/or opening any additional
3 individual and/or joint checking, savings or other financial
4 accounts for either personal or business purposes without the
5 knowledge and prior approval of the Probation Department. The
6 defendant shall cooperate with the probation officer in the
7 investigation of his financial dealings and shall provide
8 truthful monthly statements of his income and expenses. The
9 defendant shall cooperate in the signing of any necessary
10 authorizations to release information forms permitting the US
11 Probation Department access to his financial information and
12 records.

13 The issue of restitution will be left open pending
14 our submissions regarding the recent submission by the victim.

15 In addition, Mr. Shkreli must pay a fine of \$25,000
16 on each of Counts Three, Six, and Eight for a total fine of
17 \$75,000. The fine is due and payable immediately from
18 Mr. Shkreli's assets and income from all sources. He must
19 also pay a \$300 mandatory special assessment with interest to
20 be paid immediately.

21 And I believe Mr. Brafman wanted to make further
22 submissions regarding a recommendation to BOP.

23 MR. BRAFMAN: Yes, Your Honor. We could have it by
24 the end of the day Tuesday, if you can keep the judgment of
25 conviction open until then, please.

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1 THE COURT: All right.

2 How much time would the Government need to respond.

3 MS. KASULIS: Two days, Your Honor.

4 THE COURT: All right. So by next Tuesday, the
5 13th, the defense will submit any further submissions
6 regarding restitution or designation. Why don't we just say
7 Friday, March 16th, the Government will respond.

8 Is there anything else I should address at this
9 time.

10 MS. KASULIS: No, Your Honor. Thank you.

11 MR. BRAFMAN: No, Your Honor.

12 THE COURT: All right.

13 I do wish you well, Mr. Shkreli. I do believe that
14 you have the capacity to make a difference in the area of
15 orphan drugs and to help many people in need. I would
16 encourage you while you are in custody that you seek mental
17 health treatment and that you continue to display your gifts
18 for teaching. You are obviously a gifted teacher who has
19 assisted many people both within the institution and outside,
20 so I do wish you well, sir.

21 THE DEFENDANT: Thank you very much, Your Honor.

22 THE COURT: All right.

23 Is there anything else I should address.

24 MS. KASULIS: No, Your Honor.

25 MR. BRAFMAN: No, Your Honor.

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1 THE COURT: Thank you. We're adjourned.
2 (Matter concluded.)
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